



DILAPIDATIONS

BANISTER FLETCHER


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Banister Fletcher

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DILAPIDATIONS.

A TEXT-BOOK FOR

ARCHITECTS AND SURVEYORS

IN TABULATED FORM.



By

BANISTER FLETCHER,

ASSOCIATE OF THE ROYAL INSTITUTE OF BRITISH ARCHITECTS.

(*Author of "Model Houses."*)

LONDON:

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1872.

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DILAPIDATIONS

A TEXT-BOOK FOR

ARCHITECTS AND SURVEYORS

SHOWS IN A TABULATED FORM

WHO ARE LIABLE FOR DILAPIDATIONS

AND THE EXTENT OF THE LIABILITY OF

LESSORS — LESSEES —

TENANTS AT WILL — TENANTS BY ELEGIT,
STATUTE, MERCHANT, OR STAPLE — TENANTS
IN FEE SIMPLE — TENANTS IN TAIL — TENANTS
FOR LIFE — TENANTS FOR YEARS WITHOUT IMPEACHMENT
OF WASTE — MORTGAGOR — MORTGAGEE IN
POSSESSION — YEARLY TENANTS — TENANTS
IN COMMON AND JOINT TENANTS —
RIGHTS OF COPARCENERS ;

ALSO,

WHAT ARE DILAPIDATIONS AND WASTE ;

AND FURTHER,

FULLY INSTRUCTS THE SURVEYOR HOW TO TAKE AND VALUE THEM

THE WHOLE GIVEN IN A PRACTICAL AND COMPREHENSIVE FORM ;

TO WHICH IS ADDED

THE DUTIES OF SURVEYORS,

WITH A TABLE OF LEGAL CASES, EMBRACING THE MOST RECENT ;

INCLUDES MANY USEFUL HINTS ON THE SUBJECT ;

AND IS ILLUSTRATED THROUGHOUT BY EXAMPLES DRAWN FROM THE AUTHOR'S
EXPERIENCE, AND LATEST LEGAL DECISIONS.

By

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P R E F A C E.

THE book which, while it instructs the young practitioner in his duties, is also an authority and work of reference to the maturer members of the profession, occupies an envied position. By devoting much time in study, and bringing to bear hereon the experience of more than eighteen years' practice, I trust I have succeeded in producing such a work.

Further, that it might be criticised in detail, portions have been published week by week, with the desire expressed that the profession would do so. In the result, extending over many weeks, the only letters received have been those asking for further information (the answers to which will be found in the Appendix), and those from all parts of England, some desiring, others strongly urging, that the series should be published in the completed form for handy reference.

To the legal profession I venture specially to commend this work, believing it will enable them better to comprehend the technicalities of my profession, while the confirmation of all the *legal* points, by cases, ensures their accuracy.

BANISTER FLETCHER.

24, Bedford-square,

February, 1872.

TABLE OF CASES CITED.

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Aston v. Aston.	Doe d. Morecraft v. Meux.
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Bayne v. Walker.	Doe d. Vickery v. Jackson.
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Borgnis v. Edwards.	Doe d. Worcester School Trus- tees v. Rowlands.
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Collins v. Barrow.	Gutteridge v. Munyard.
Cole v. Greene.	Grange v. Lockwood.
Cowie v. Goodwin.	Green v. Eales.
	Griffith's case.

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Harris v. Jones.	Pyot v. St. John.
Hare v. Groves.	Pool v. Archer.
Hart v. Windsor.	Payne v. Haine.
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Johnson v. St. Peters.	Sutton v. Temple.
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DILAPIDATIONS.

CHAPTER I.

INTRODUCTION—BOOKS MENTIONED TO WHICH REFERENCE IS MADE
—HOW THE SUBJECT IS CLASSIFIED—DIFFICULTIES OF THE SUBJECT TO LAYMEN —REASON ADVANCED FOR USING THE TABULATED FORM.

WHEN one considers the numerous arts and sciences that the professional man must have at least some acquaintance with, a list of which the reader will find given at some length by that grand old writer, Vitruvius, in the first chapter of his first book, is it to be wondered at, that dilapidations are not more studied? The young architect too often revels in grand ideas, in designs for magnificent public halls, palaces, and churches, in perspectives giving impossible views (parenthetically one may remark that one finds older architects making perspectives on the same principle, especially some of those who send in their designs in competition), in laying out grounds with splendid stone and marble terraces, and endless flights of steps and fountains of gorgeous design, and lives in expectation of suddenly rising to the top of the profession, by some lucky chance or successful competition (that bane of the profession), and such an one invariably despises the slow laborious work by which our predecessors made their way into large practice; and consequently his success becomes a matter of grave doubt and pure speculation. But let us assume that the young architect and surveyor really desires to be well grounded in the practice of dilapidations, what are the books from which he must derive his knowledge?

First, of course, there is Gwilt's "Encyclopædia of Architecture," giving a general outline of the subject, and more than this could not be expected from such a book. Next there is that celebrated work, "Woodfall's Law of Landlord and

Tenant" (of which the ninth edition, by W. R. Cole, is, I think, the latest). Next, a valued work, "Grady on Fixtures and Dilapidations" (of which the second edition is the latest); and there is also the admirable report of the select committee of the Institute; this latter pamphlet, however, deals only with a portion of the subject. Omitting all consideration of the cost of these books, the reader finds that lawyers, writing upon the subject of dilapidations, not understanding in the least the practical part thereof, give a mass of information, so arranged that he has to wade through the ponderous volumes to find the special point he is in doubt about. It does, therefore, appear that it would be a most valuable assistance to the surveyor in his daily vocation if a brother professional were to put in a short and simple form the exact liabilities of persons to dilapidations and reparations; drawn from the latest precedents, and citing also what is the usual practice of the present day. It is proposed in the following chapters to do this.

With this view I will classify the different holdings, and show separately all the liabilities that can attach to every such holding. The first table will show separately all the rights and liabilities that attach to a lessor or landlord; the next separately all that attach to a lessee; and so on; yearly tenant; tenant-at-will (I may mention an almost exploded kind of tenancy); tenant in fee simple; tenant-in-tail; tenant-in-tail after possibility of issue extinct; mortgagor; mortgagee in possession; tenants in common; joint tenants; coparceners; tenants for life; tenants for years without impeachment of waste; so that at a glance the technical reader can find out what he requires to know and properly advise his client.

Often, in my own practice, has a client asked me what sort of dilapidations he was liable for, and no doubt this has occurred to many of my brethren; and how few can state positively the exact liability, or tell his client what reparations he must make under his peculiar holding to satisfy the dilapidations, and thus avoid a money payment.

One instance I may mention, which shows that solicitors themselves are uncertain or inaccurate. A client, who is a solicitor in large practice, had taken a house on a twenty-one years' repairing lease; and afterwards a builder, who was called

in to see the roof, reported that an entire new roof was necessary. I was then consulted, my client saying that if a new roof was wanted, of course that was not for him to do, but his lessor, and I had to point out that he ought, before he took the house, to have had it surveyed, to judge whether the roof and walls would last the length of the proposed lease, as he was bound to keep the house up, and therefore to keep the roof water-tight.

I purpose first to consider the rights and liabilities of the various parties; next the various covenants, with their meanings and value; then dilapidations and waste; going practically into what they are and how to ascertain them. Next, I will schedule dilapidations under the respective trades to which they belong. The duties of surveyors will follow. Then how to prepare for action and actions, who can maintain them and against whom they can be brought; and lastly, explain what amounts to a *waiver* and when *injunctions* can be obtained. In Appendix will be found answers to questions.

Let not any reader think lightly of these tabulated forms which follow. They are the essence of much labour, and will save him wading through many volumes.



CHAPTER II.

RIGHTS AND LIABILITIES OF LESSORS AND LANDLORDS—OF LESSEES
—OF TENANTS-AT-WILL—OF TENANTS BY ELEGIT, STATUTE,
MERCHANT, OR STAPLE—OF TENANTS IN FEE SIMPLE—OF
TENANTS-IN-TAIL—OF TENANTS-IN-TAIL AFTER POSSIBILITY OF
ISSUE EXTINCT—OF TENANTS FOR LIFE—OF TENANTS FOR
YEARS WITHOUT IMPEACHMENT OF WASTE—OF MORTGAGOR—OF
MORTGAGEE IN POSSESSION—OF YEARLY TENANTS—OF TENANTS
IN COMMON AND JOINT TENANTS—OF COPARCENERS.

TABLE I.—Rights and Liabilities of Lessors and Landlords.

1. Not liable to repair premises where there is no express agreement or stipulation that they shall do so. *a* (Note.—This applies equally to premises let to a yearly tenant, or let on lease.)

2. Not liable to rebuild, even though he has insured the premises and received the amount from the insurance office. *b*

3. No implied covenant arises on a lease that the house is reasonably fit for habitation or occupation. *c*

4. No implied covenant that it will last during the term. *d*

5. Where the lessor agrees that he would first repair the messuages he *must* perform this covenant before he can insist on his lessee repairing, &c. *e*

a *D. Loft v. Dennis*, 1 E. and E., 474—*Pindar v. Ainsley*, cited 1 T. R., 312—*Gott v. Gandy*, 2 El. and B., 845—*Pomfret v. Ricraft*, 1 Wms. Saund., 322, n 1; 28, L. J. Q. B., 168.

b *Belfour v. Weston*, 1 T. R., 312—*Leeds v. Cheetham*, 1 Sim., 151—*Bayne v. Walker*, 3 Dow., 233—*Brown v. Quilter*, Ambl., 619.

c *Hart v. Windsor*, 12 M. and W., 68—*Sutton v. Temple*, *ib.*, 52; overruling *Edwards v. Hetherington*, 7 D. and R., 117—*Collins v. Barrow*, 1 Moo. and Rob., 112—*Salisbury v. Marshall*, 4 C. and P., 65—*Cowie v. Goodwin*, 9 C. and P., 378.

d *Arden v. Pullen*, 10 M. and W., 321.

e *Neale v. Ratcliffe*, 15 Q. B., 916.

6. Where a sale of premises took place with a liability of the above (lessor) to do repairs at the end of tenancy (a lease being running), it was held that in whatever way the lease was determined, or at whatever time, the liability *still* attached. *a*

7. Where under covenant to repair all the *external* parts of the premises, and an adjoining house is pulled down which exposes party wall, and that wall fell down, it was held that he must rebuild, as the *external* parts of the premises are those which form the enclosure of them, and beyond which no part extends; and thus the decision made this class (the lessors) liable under the covenant. *b*

8. Where the covenant is that in case of fire lessor would "build and replace them in the same state as before the fire," he is *only* bound to reinstate them as they were when he let them, and not bound to rebuild any additions that may have been, since granting the lease, erected by his lessee. *c*

9. Where covenant to repair contains the exception, "casualties by fire and tempest excepted," not bound to repair in either of the excepted cases. *d* (Note.—Tenant, notwithstanding, continues liable to pay rent.) *e*

10. Cannot be compelled to repair unless under an express covenant that he will do so. *f*

11. Cannot be compelled to rebuild where premises are burnt down, although he may have insured the premises and received the amount of such insurance from the office, unless specially bound to rebuild in such an eventuality. *g*

a Horsfall v. Testar, 1 Moore, 89; 7 Taunt., 385.

b Green v. Eales, 2 Q. B., 225; 1 G. and D., 468.

c Loader v. Kemp, 2 O. and P., 375, per Best, C. J.

d Weigall v. Waters, 6 T. R., 488.

e Hare v. Groves, 1 Anstr., 687—Belfour v. Weston, 1 T. R., 310.

f Bayne v. Walker, 3 Dow., 233.

g Pindar v. Ainsley, cit. 1 T. R., 312, equity cases—Leeds v. Cheetham, 1 Sim., 146—Holtzaffel v. Baker, 18 Ves., 115—See Hare v. Groves (above)—Lofft v. Dennis, E. and E., 474; 28 L. J., 163.

12. Cannot enter to do repairs unless some stipulation to that effect. (Note.—Remedy by action.) *a*

13. Covenants to repair usually have been constructed in favour of lessors and landlords. (Note.—There is a change perceptible in very recent decisions inclining to a more liberal interpretation of covenants.)

It will be seen by comparing this table with the table of liabilities of lessees (Table II.) that the lessors and landlords have more *rights* and less liabilities.

We have now to consider the rights and liabilities of that large class of persons called lessees, and these will be found in the following tables. Tables III. and IV. are respectively devoted to the consideration of the rights and liabilities of tenants-at-will, and tenants by elegit, statute merchant, or staple. The rights and liabilities of tenants in fee simple, tenants-in-tail, and tenants-in-tail after possibility of issue extinct, are comprised in Tables V., VI., and VII.

TABLE II.—Rights and Liabilities of Lessees.

1 Cannot compel landlord, or lessor, to repair, unless bound by contract to do so. *b*

2 Cannot require premises to be rebuilt by lessor, although lessor may have insured the premises, and has received the amount from the insurance office. *c*

3. Must pay rent though premises be burnt down, unless there is an express covenant that rent shall cease. *d*

4. No implied condition that they may leave or quit, if landlord neglects to do the repairs which he is bound to do. *e* (Note.—There must be an express stipulation to that effect to entitle them to do so.) *f*

a *Barker v. Barker*, 3 Car. and P., 557—*Worcester School Trustees v. Rowlands*, 9 C. and P., 739.

b *Leago v. Deane*, 4 Bingh., 459.

c *Pindar v. Ainsley*, cit. 1 T. R., 312.

d *Hare v. Groves*, 1 Anstr., 687.

e *Surplice v. Farnsworth*, 8 Scott N. S., 307.

f *Furnival v. Grove*, 30 L. J. C. P., 2.

5. No implied covenant that if landlord omit to do the repairs, according to his covenant, they may do them, and deduct the amount from the rent. *a*

6. Where there is an express agreement in writing for the hire of a house, and for keeping it in repair, there is also the implied obligation to use it in a tenant-like manner. *b*

7. An implied contract to commit no waste.

8. Where no express contract or covenant as to repair, or no express exemption from liability to repair, then bound only to preserve premises from occasional and accidental dilapidations.

9. Cannot leave where lessor fails to keep his covenant to repair, although lessee may have repeatedly served him with written notices to do so. *c* REMEDY by action on the covenant.

10. If a covenant to repair be general, then only liable to keep the premises in substantial repair (a literal performance is not required). *d*

11. Even where premises were taken for a term of $3\frac{1}{4}$ years by written agreement, which was neither stamped nor signed by both parties, with the condition of keeping them in good repair during the occupation, it was held, bound to repair *though agreement void*. *e*

12. Where lease granted becomes inoperative from certain causes, *still* the liability to repair continues limited in its construction to such repairs as are consistent with a lease tenancy, holding over after lease expired. *f*

a Howlett v. Strickland, Cowp., 56—Weigall v. Waters, 6 T. R., 488—Smith v. Mapleback, 1 T. R., 441—See Johnson v. Carre, 1 Lev., 152—Baylye v. Hughes, Cro. Car., 137.

b Holford v. Dunnett, 7 M. and W., 348—Dietrichsen v. Giubillei, 14 M. and W., 845—Doe d. Worcester School Trustees v. Rowlands, 9 C. and P., 734—White v. Nicholson, 4 Scott N. R., 707—See Deere v. Ivey, 4 Q. R., 379.

c Surplice v. Farnsworth, 8 Scott N. S., 307—See Furnival v. Grove, 30 L. J. C. P., 2.

d Harris v. Jones, 1 Mo. and Rob., 173.

e Richardson v. Gifford, 1 Ad. and E., 52; 3 Nev. and M. 325—See Arden v. Sullivan, 14 Q. B., 332.

f Arden v. Sullivan, *supra*—See Doe d. Davenish v. Moffatt, 15 Q. B., 257—See Clayton v. Blakey, 8 T. R., 3—Lee v. Smith, 9 Ex. 662—Doe d. Pennington v. Taniero, 12 Q. B., 998—Beale v. Sanders, 3 Bing., N. C., 859—See Plator v. Cater, 9 M. and W., 315.

13. Holding over after determination of lease, liable under the covenant in expired lease to keep premises in repair, and the decisions give it that even if premises are burnt down *after* the expiration of lease, still they are to be rebuilt as if lease had *not* expired. *a* (Note.—Also I may mention where a demise for seven years, and then from year to year. The covenants to repair continue in force after the expiration of the seven years.) *b*

14. Liable to repair (within convenient time) even if roof be stripped by the *wind*. *c*

15. Not liable to rebuild if house be blown down by *tempest*, or destroyed by *great wind*, or abated by *lightning*. *c*

16. Not liable for breaches of covenant to repair, that may occur *before* execution of lease; although such breaches may happen *subsequent* to the day from which the term is to commence. *d*

17. It is very important to remember in purchasing that, no matter what length of time may occur between the date of the contract and the completion of the purchase, still (title being good and made good), all dilapidations *from date of contract* fall on the purchaser. *e*

18. Liable for pulling down houses, or suffering houses to be uncovered, whereby the rafters, or other timbers, become rotten. *f* (Note.—This is termed “WASTE.”) The following is well worth quoting:—“But if the house be uncovered when the tenant cometh in, it is no waste to suffer the same to fall down. But though it be ruinous at the tenant's coming in, yet if he pull it down it is waste, unless he re-edifie it againe.” *f*

a Digby v. Atkinson, 4 Camp., 275—See Johnson v. St. Peter's, Hereford, 4 Ad. and E., 520.

b Brown v. Trumper, 26 Beav., 11.

c Co. Lit., 53 a—Bro. Abr., tit. “Conditions,” pl. 40—2 Bol. Abr., 818—See Welgall v. Waters, 6 T. R., 488.

d Shaw v. Kay, 1 Ex. 412.

e Minchin v. Nance, 4 Beav., 332.

f Co. Litt., 53 a.

19. Where covenant "as often as was necessary, well and sufficiently, to repair, uphold, sustain, paint, glaze, cleanse, and scour, and keep and leave the premises in such repair, reasonable wear and tear excepted."—HELD, that if repaired within a reasonable time before leaving, only bound, in addition to the repair of actual dilapidations, to clean the old paint, &c., and *not* to repaint. *a*

20. Where covenant "to leave the premises at the end of the term sufficiently maintained, repaired, paled, and fenced," if pavement out of repair, and glass broken, this covenant is *broken*. *b*

21. Odd as it may appear, it is yet correct that the covenant "to paint at the end of five years" is not a continuing covenant.

22. Bound to *paint inside* where the covenant in the lease of a house is "should and would substantially repair, uphold, and maintain." *c*

23. Must rebuild if house be burnt by accidental fire. *d*

24. Cannot be compelled to make good such dilapidations as accrue from the natural operations of time and the elements, when the premises were old at the time of *granting* lease. *e*

a Scales v. Lawrence, 2 F. and F., 289, *Willes J.*

b Pyot v. St. John, Cro. Jac., 329.

c Monk v. Noyes, 1 Car. and P., 265. I quote this case specially because so many hold that inside painting is decorative, and that as long as no damage to the wood can be shown, no internal painting can be maintained.

d Chesterfield (Earl) v. Botton (Duke), Com. R., 627—Bullock v. Dommitt, 6 T. R., 650—Poole v. Archer, Skin., 210—Digby v. Atkinson, 4 Campb., 275—Clarke v. Glasgow Ass. Co., Macq., 668. This liability comes under the general covenant to repair. A peculiar case in support of this is worth citing. I quote from "Grady." The case is "Gregg v. Coates," 23 Beav., 33; 2 Jour., N. S. 964. A testator directed his trustees to allow B. to occupy a mill as long as he should think proper to do so, keeping the premises in good and tenantable repair, and paying a certain rent. B. took possession, and the premises were destroyed by fire. Held that B. was bound to reinstate them, and was liable for the rent in the meantime, and that he could *not escape* from his liability to rebuild by declining any longer to retain them.

e Stanley v. Towgood, 3 Bing., N. C., 4; 3 Scott, 313—Payne v. Haine, 16 M. and W., 541.

25. Must put premises into repair if necessary, where the lease of old premises contains covenant to keep in repair; and must leave them in repair at end of the term, because they cannot be kept or left in repair in accordance with the covenant, unless this is done. *a*

The next table relates to tenants-at-will, who are those who hold merely at the will of some one else, and whose tenancy therefore may be determined without any notice at any time. I may remark that this class of tenancy is almost out of date, as directly rent is paid at fixed periods for certain lengths of time, the tenancy merges from tenancy-at-will, to yearly tenancy, monthly tenancy, or such tenancy, as the payment represents.

TABLE III.—*Rights and Liabilities of Tenants-at-Will.*

1. Not liable for dilapidations. *b*
2. Liable only for wilful waste. *c*
3. Not liable even where house burnt down by reason of negligently keeping the fire. *d*
4. Not liable where house falls down, for the reason that he is not bound to repair. *d*
5. No liability except to pay rent and occupy.

TABLE IV.—*Rights and Liabilities of Tenants by Elegit, Statute Merchant, or Staple.*

1. Not bound to do any repairs. *e*
2. Liable, it appears, for cutting timber, &c. (called committing waste). *f*

TABLE V.—*Rights and Liabilities of Tenants in Fee Simple*

1. Not liable for repairs. (Note.—Not responsible to any one for the manner in which

a Payne v. Hayne, 16 M. and W., 541.

b Cruise's Digest, tit. 9 ss., 14, 15.

c Co. Lit., 71.

d Salop (Countess) v. Crompton, Cro. Eliz., 777, 784.

e See Worcester's case (Dean and Chapter of), 6 Co. Rep., 37; F. N. B., 58; Bac. Abr., tit. "Waste," (H.)

f F. N. B., 58, H.; Bro. Abr. tit. "Waste," pl. 78—Norwich (Mayor of) v. Johnson, 3 Mod., 93.

he uses or treats the estate, and the party to whom he devises it *takes it with all its defects.*)

TABLE VI.—Rights and Liabilities of Tenants-in-Tail.

1. Not liable for repairs, exactly the same as tenants in fee simple, while possibility of issue exists. *a* (Note.—The reason of this would appear to be that the right of the remainder man is so remote and uncertain, that its value is not affected by dilapidations or alterations of the tenements.)

TABLE VII.—Liability of Tenants-in-Tail after Possibility of Issue Extinct.

1. Are liable for destruction of the premises. *b*

I purpose next giving the remaining tables of rights and liabilities; and also considering the meaning of the various covenants, and their construction by the authorities.

TABLE VIII.—Rights and Liabilities of Tenants for Life.

1. Liable to repair (even though he be such without impeachment for waste). *c*

2. Cannot make remainder man contribute (not even where new roof required through dry rot). *d*

3. May have allowed him, the expense of finishing a mansion house left unfinished by testator. *e*

4. Must not pull down houses. *f*

5. If he has pulled down houses, equity will compel him to rebuild. *f*

a See Bac. Abr., tit. "Waste," F.

b Williams v. Williams, 15 Ves. jun., 430.

c Partridge v. Powlett, 2 Atk., 383.

d Nairn v. Majoribanks, 3 Russ., 582.

e Hibbert v. Cooke, 1 Sim. and Stu., 552.

f Vane v. Barnard (Lord), 2 Vern., 739; S. C., 1 Salk, 161—See Bolt v. Somerville (Lord), 2 Equity Cas. Abr. tit. "Waste," pl. 8.

6. Must not cut down timber. *a* (Note.—Court of Equity will restrain.)

Nos. 4, 5, and 6 cannot be done even where the tenant for life is without impeachment for waste, although such words give the tenant a greater interest and more extended powers than an ordinary tenant for life. *b*

TABLE IX.—*Liability of Tenant for Years without Impeachment of Waste.*

1. Tenant may not cut down trees *towards the end* of term, it seems, where he had not cut them down before during the term. *c*

TABLE X.—*Liability of Mortgagor.*

1. Bound to recoup any proper outlay made by "mortgagee in possession" in repairs.
2. Must not cut down timber. *d*

TABLE XI.—*Rights and Liabilities of Mortgagee in Possession.*

1. Bound when in possession of the estate, to preserve the premises from occasional, or accidental dilapidations. *e*
2. Bound, like any other tenant, to keep the buildings and other parts of the estate in ordinary repair.
3. Not liable for gradual decay, the effects of time. *f*
4. May pull down ruinous buildings and erect better ones, to prevent a forfeiture; but he cannot alter the mortgaged premises. *g*
5. May cut down and sell timber, where land is of insufficient security—not otherwise. *h*

a See *Aston v. Aston*, 1 Ves., 264.

b See *Bowles' case*, 11 Co. Rep., 79; Co. Lit. 220a.

c *Abraham v. Bubb*, 2 Freem., 54—*Evelyn's case (Lady)*, 2 Swanst., 172.

d *Humphries v. Harrison*, 1 J. and W., 581—See *Fairfield v. Weston*, 2 Sim. and Stu., 96; but see *Hippesley v. Spencer*, 5 Mad., 422.

e *Godfrey v. Watson*, 3 Atk., 517.

f *Russell v. Smithies*, 1 Anst., 96.

g *Hardy v. Reeves*, 4 Ves., 480.

h *Withrington v. Banks*, Sel., c.c. 31—*Farrant v. Lovel*, 3 Atk., 723.

TABLE XII.—*Rights and Liabilities of Yearly Tenants.*

1. Not liable for permissive waste.
2. Only answerable when injury happens to premises through voluntary negligence. *a*
3. Not liable for dilapidations. *b*
4. Not liable for inevitable accident.
5. Not liable for accidental fire.
6. Bound not to commit any waste. *c*
7. Must perform fair and reasonable repairs, such as putting in windows and doors that have been broken by them, so as to prevent waste and decay of the premises. *d*
8. Must keep premises wind and watertight. *e* (Note.—This seems to be the extreme requirement according to the cases, but I would remark, that it appears to be opposed to the custom of London, where the tenant always considers the landlord bound to do all repairs; and within my experience in the North of England and London, I have never known a landlord succeed, where he has required a tenant to repair the roof.)
9. Not liable for wear and tear, and the like. *f*
10. If farming premises, only bound to do fair and tenantable repairs, preventing only waste or decay of the premises, but not liable for substantial repairs. *g*
11. Liable only to use farm in a husbandlike and tenantlike manner; that is to say, according to the custom of the county in which the land is situate. *h*

a *Salop (Countess) v. Crompton Cro.* 11 H. 777, 784.

b *Ferguson v. —*, 2 Esp., 590.

c 1 Saund. 323, h.n. 7; Co. Lit., 57a—1 J. B. Moore, 100.

d *Ferguson v. —*, 2 Esp., 590.

e *Auworth v. Johnson*, 5 Car. and P. 239—*Leech v. Thomas*, 7 C. and P. 327.

f *Torriano v. Young*, 6 Car. and P. 8—See *Martin v. Gillham*, 2 Nev. and P. 568.

g *Ferguson v. —*, 2 Esp., 590.

h *Horsefall v. Mather*, Holt N.P.C. 7—*Gibson v. Wells*, 1 B and P. N. R. 290—*Harnett v. Maitland*, 16 M. and W., 264—*Yellowly v. Gower*, 11 Ex., 294.

TABLE XIII.—Rights and Liabilities of Tenants in Common, and Joint Tenants.

1. Each tenant is liable for voluntary waste.
2. None liable for permissive waste.
3. Each tenant is bound to contribute towards the reparation of decay caused by time or other circumstances.
4. Are liable to keep in tenantable repair where only life interest, or for a term of years.
5. Not liable for waste.

It appears no action at common law is maintainable between tenants in common and joint tenants for waste.

(Note.—It is worth remembering that a tenant in common, or a joint tenant, cannot enforce a partition of an estate.)

TABLE XIV.—Rights of Coparceners.

1. No liability at all as to repairs or dilapidations. *a*

The reason because any of them might at common law have enforced a partition.

It will be seen from the foregoing Tables that those numbered III., IV., V., VI., VII., VIII., XII., and XIII. relate to those classes of tenancies which do not usually come under the surveyor's notice, while the Tables IX., X., and XI. relate to those that are of almost daily occurrence.

a See 2 Inst., 408; and Bac. Abr., tit. "Waste."



CHAPTER III.

COVENANTS—THEIR CONSTRUCTION AND ACCEPTED MEANING—REPAIR FORTHWITH—KEEP AND LEAVE IN REPAIR—HABITABLE REPAIR—TENANTABLE REPAIR—AS TO PULLING DOWN AND REBUILDING—IF PREMISES FALL DOWN—GOOD AND TENANTABLE REPAIR AND WEAR AND TEAR—OLD BUILDINGS—LIABILITY WHERE NO LEASE EXISTS—GOOD REPAIR—FARM BUILDINGS—HOUSEBOTE—FIRE—INSURANCE—BREACH OF COVENANT—REBUILDING—BOUNDARY WALLS—FENCE WALLS—PARTY WALLS—THREE MONTHS' NOTICE TO REPAIR AND THE GENERAL COVENANT—AS TO COVENANT TO LEAVE PREMISES IN REPAIR—AFTER LEASE EXPIRED—WHERE BURNT DOWN—WHERE COVENANT [TO REPAIR BY A FIXED DAY NEED NOT BE COMPLIED WITH—INSPECTION OF STATE OF PREMISES—WHERE NO COVENANT POWER AT COMMON LAW.

HAVING given in a tabular form the exact liabilities of the different parties, we next have to consider the meaning of the covenants and their construction by the authorities; and when we shall thus have cleared away the outworks, we will proceed to dilapidations (lay) and waste. To be well grounded in the subject, the following table must be studied and remembered:—

1. A covenant to repair *forthwith* does not mean by any specific time, but it is held such covenant must receive a reasonable construction. *a* (Note.—It must, however, be done with all reasonable celerity—*Burgess v. Boetafeur*, 7 M. and G., 494, per Tindall, C. J. It is therefore a question for the jury to determine whether lessee has done what he reasonably ought in performance of it—*Doe d. Pittman v. Sutton*, 9 C. and P., 706.)

2. Where the covenant in the lease of a dwelling house with the appurtenances, for a

a *Davis v. Burrell*, 17 L. T., 56, per Jervis, C. J.

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term of years, contains the covenant to keep and leave the house in repair, this is satisfied by keeping it in *substantial* repair, according to the nature of the building; and with a view to determine the relative sufficiency of the repair, the jury may be directed to inquire whether the house was new or old at the time of the demise. *a*

3. Held, that "habitable repair" and "tenantable repair" were about of equal value. *b*

4. The covenant to repair does *not* permit the pulling down and rebuilding. If, however, premises *fall* down, they must be rebuilt under this covenant. *c*

5. *Important* to remember when covenant is to keep the premises in *good and tenantable* repair, and to surrender them at the end of the term in like tenantable condition, reasonable wear and tear excepted. The meaning of this covenant is good tenantable repair, having regard to the state of the premises in point of age. The landlord is not to have, at the end of term, a new house at the tenant's expense. *d*

The general state and condition of the premises may be shown, but not matters of detail.

6. "The same nicety of repair is not enacted for an old building as for a new one." *e*

7. Liability to repair attaches sometimes where no lease is in existence. *f*

The following case I quote in confirmation:—An agreement for a lease of copyhold premises for a term of years to be granted as soon as a license could be obtained from the lord of the manor, and to contain a covenant for proposed lessee to keep premises in repair during term. Proposed lessee entered and occupied the premises for the term. Held, he was liable on the covenant to repair, though *no lease* had been made to him pursuant to the

a Gutteridge v. Munyard, 1 Mo. and Rob., 334.

b Belcher v. M'Intosh, 2 M. and R., 186.

c Jones v. Verney, Willea, 169.

d Young v. Mantz, 6 Sc., 7277—See also Burdett v. Withers, 7. A and E., 136.

e Muntz v. Goring, 4 Bing. N. C., 453.

f Pister v. Cater, 9 M. and W., 315.

agreement, nor any license obtained from the lord for that purpose.

8. *Good repair* would appear to be equivalent to *habitable repair*. *a*

The case is *Cooke v. Cholmondeley*, where it was held that the premises were not to be kept in as good repair as at the time of testator's death, and that *good repair* would not have reference to that term, but that the premises must be kept in *habitable repair*.

9. *Farming buildings*.—These words are held to include the farmhouse in the covenant to repair. *b*

10. Where the covenant to repair provides for "leaving or taking in and upon the demised premises competent housebote," &c., "without committing any waste or spoil." The covenant to repair is *absolute*, and does not depend upon the lessee being able to find such competent and sufficient housebote. *c*

11. Where covenant in a farm lease "well and substantially to repair, and keep in good substantial repair, and so well and substantially repaired to yield up, &c." This covenant is construed to mean in as good a state of repair as when lease was granted; and thus they must be *inferred* to have been in a *tenantable state*. *d*

12. *Fire*.—The general covenant to repair, and leave in repair at the end of the term, necessitates rebuilding the premises in the case of their destruction by accidental fire. *e*

It is well here to remark that though a lease contains a covenant to insure the premises for a specific sum, if the premises are burnt down the liability on the covenant to repair is *not* limited to the amount of the sum for which the premises are insured. I would repeat that lessor or his assignee cannot be required to rebuild even though he may have voluntarily insured the premises and received the money. *f*

a *Cooke v. Cholmondeley*, 4 Drew, 326.

b *White v. Wakley*, 26 Beav., 17.

c *Bristol (Dean, &c.), v. Jones or Nugent*, 7 W. R., 307; 28 L. J. Q. B., 201.

d *Brown v. Trumper*, 26 Beav., 11.

e *Chesterfield (Earl) v. Bolton (Duke)*, Com. R., 627—*Poole v. Archer*, Skin., 210—*Bullock v. Dommitt*, 8 T. R., 650.

f *Digby v. Atkinson*, 4 Camp., 275.

13. It is a breach of the covenant to keep in repair, to break a *doorway* through the wall of a demised house into an adjoining house. *a*

* The continuing the doorway after so broken through is also a breach of this covenant.

14. It is not a breach, however, to enlarge windows, to open external doors, and to take down partitions. *b*

15. It is a breach of the covenant to pull down and rebuild a house in a different fashion, even though the new one may be more valuable than the old. *c*

It has been held that converting a brewhouse into tenements of greater value is *waste*—and also that converting two rooms into one is *waste*. *d*

16. *Boundary Walls*.—These are included in the general covenant to repair *external parts* of the demised premises. *e*

17. *Fence Walls*.—Where covenant “to repair, uphold, support, sustain, and maintain the brick walls to the demised premises belonging.” HELD, that this covenant is broken, where a brick *fence* wall which divided the court-yard at the front of the house from another yard at the side of the house, is pulled down. *f*

18. *Party Walls*.—The general covenant to repair does not affect these walls where the premises are leased at a rack rent; as the Metropolitan Buildings Acts relieve such lessees, and place the liability on the lessors. *g*

19. *Three Months' Notice to Repair*.—It is sometimes considered that no action of

a Doe d. Vickery v. Jackson, 2 Stark, 293.

b Doe d. Dalton v. Jones, 1 Nev. and M., 6; 4 B. and Ad., 126.

c Grange v. Lockwood, 2 F. and F., 115; Willes, J.—See Borgnis v. Edwards, 2 F. and F., 111; 2 Roll. Abr., 815, pl. 17.

d Cole v. Greene, 1 Lev., 311; London (City) v. Greyme, Cro. Jac., 181; Co. Lit., 53, s. n. 3.

e Greene v. Eales, 1 G. and D., 468; 2 Q. B., 225.

f Doe d. Wetherell v. Bird, 6 Car. and P., 125; S. C., 2 Nev. and M., 235—See London (Corp.) v. Venables, 6 C. and P., 196 n.

g 7 and 8 Vic., c. 84.

ejectment can be brought without this notice, but surveyors should remember that in nearly all leases there are two distinct covenants—one, to repair on receiving a certain notice; the other, to repair generally; and the action on the latter may be brought at any time without notice, and it is no answer to such action to say that no notice has been given. *a*

I should mention if, however, these two covenants form one sentence, which they would do when they directly follow each other, and that the sentence is not complete without including both covenants, that then notice must be given before bringing action, as it is HELD that it is only *one* covenant.

20. The covenant to repair during the term, &c., and the covenant to leave premises in repair at the end of the term, are separate and distinct covenants, therefore notice is *not* necessary to sustain an action for non-repair at the end of the term. *b*

21. *After Lease Expired.*—It must be remembered that the liability continues under the covenants where tenancy continues, and no fresh agreement or lease is entered into. *c*

It has been HELD that in such cases of holding over, where premises burnt down, bound to rebuild as if the lease had not expired.

22. Covenant by a fixed day to repair, would not, it appears, be broken, if there were anything of importance (as a plague in a house) to prevent the repairs being completed; but they must be done within a reasonable time afterwards. *d*

23. There is usually a covenant in leases, authorising lessor's sending his surveyor, &c., to inspect state of the premises, and take an account of wants of reparation; it has been

a Horsfall v. Testar, 1 Moore, 89; 7 Taunt., 385—Wood v. Day, 1 Moore, 389; 7 Taunt., 746—Roe d. Goatsly v. Paine, 2 Campb., 520—See Doe d. Morecraft v. Meux, 4 B. and C., 606; 7 D. and R., 98; 1 Car. and P., 346—Baylis v. Le Gros, 4 C. B. N. S., 537.

b Woodf., 466—Luxmore v. Robson, 1 B. and Al., 584.

c Digby v. Atkinson, 4 Campb., 275—See Johnson v. St. Peter, Hereford (Churchwardens), 4 Ad. and E., 520.

d Griffith's case, Moore, 69; Shep. Touch., 174—Main's case, 5 Rep., 21.

held, even where no such covenant, that the lessor or reversioner may, at *common law*, enter upon the premises for this purpose, provided notice be given of such intention, and that if tenant obstruct him, he is liable to an action on the case.

I think the foregoing explanations will be sufficient to enable the reader to understand the value of the various covenants. I therefore propose to consider next DILAPIDATIONS and WASTE : what they are, and how they are practically to be dealt with.



CHAPTER IV.

EXPLANATORY OF WHAT ARE IMPROPERLY CLAIMED AS DILAPIDATIONS
 —DRAINAGE—CHIMNEYS—TREADS OF STAIRS—WALLS SLIGHTLY
 OUT OF THE UPRIGHT—REFERRED TO UMPIRE—AS TO RAKING OUT
 AND POINTING JOINTS OF BRICKWORK—DIFFERENCE BETWEEN
 DILAPIDATIONS AND MAKING PREMISES FIT FOR A NEW TENANT EX-
 PLAINED—MARBLE CHIMNEY-PIECES—CHIPPED EDGES—POSITION
 OF BOLTS NOT RELEVANT UNLESS IT CAN BE SHOWN THEY ARE
 IN DIFFERENT POSITION TO WHEN HOUSE LEASED OR BUILT—USE
 AND MISUSE OF LENGTHY SCHEDULES—MINUTE DEFECTS—COVE-
 NANT TO PAINT ONCE IN A CERTAIN NUMBER OF YEARS—IMPROPER
 DEFINITION OF THE LIABILITY—GREAT DIFFERENCE IN ESTIMATING
 VALUE—CASE MENTIONED—NO REASON CAN BE SHOWN EXCEPT
 WANT OF KNOWLEDGE FOR THIS RESULT—COMPARISON MADE
 BETWEEN BUILDERS SENDING TENDERS FOR ERECTING BUILDINGS
 AND SURVEYORS MAKING ESTIMATES OF DILAPIDATIONS—SHOWING
 THERE ARE MANY MORE CAUSES WHICH MAY RESULT IN GREAT
 DIFFERENCES WITH BUILDERS THAN SURVEYORS—GREAT VARIETY
 OF WORK THAT ARCHITECTS AND SURVEYORS HAVE TO DO—
 DILAPIDATIONS—BACON'S DEFINITION—GRADY'S DEFINITION—
 DEFINITION AS USED IN GENERAL PRACTICE FROM THE REPORT OF
 THE ROYAL INSTITUTE OF BRITISH ARCHITECTS—DAVID GIBBONS'S
 DEFINITION—WASTE, FIVE KINDS—DEFINITIONS GIVEN FROM
 WEBSTER—FROM "LES TERMES DES LA LEY"—FROM BLACKSTONE—
 FROM GRADY—FROM CRUISE'S DIGEST—AND FROM GIBBONS.

WHO that has a large practice has not been often sur-
 prised at the dicta as to what are dilapidations!

In my own experience I remember a few startling require-
 ments. On one occasion, at the determination of a lease, a
 claim was made to take up and inspect all the drainage, cleans-
 ing same if requisite, although there was not the slightest
 indication of anything being the matter with it; and notwith-
 standing that everything appeared perfect, it was contended

the lessor could insist, at the expense of the lessee, that all the works should be laid bare and made good thereafter, and even if found perfect, that would make no difference in the question as to the cost falling on the lessee! A similar requirement as to chimneys, I may mention, *obtains*, or is at least demanded, on the London estates of a noble duke, and at the end of term a sum of money is asked to cover the cost of sweeping all the chimneys, although it can be shown they have been swept within a reasonable time; still the claim is insisted on. This is a very small item, but serves to illustrate what wrong ideas are in vogue as to what is a dilapidation. Another instance, where the treads of a staircase were so worn that new nosings were required, it was insisted that new nosings would not satisfy the liability, but that new treads must be provided. Again, on another occasion, where the treads were slightly worn only (this case refers to weekly houses, where carpets are the exception), the lessor's surveyor tried to maintain that he was entitled to have new treads. Next, as to walls being slightly out of the upright. I had to refer the matter to an umpire in one case, even though it was admitted by my co-arbitrator there had been no neglect of the fabric, and that consequently the slight bulge of the side wall (which was of great length and height, and formed the wall of the return street) was not caused by any neglect on the part of the lessee; still I was required to pay a sum to cover the pulling down and rebuilding. I resisted, and the result, of course, was in my favour. Speaking of walls, I am reminded of another requirement often insisted on—namely, to “rake out and repoint brickwork of front and back walls,” notwithstanding that there may not be any open joints, and the work may be quite sound; and sometimes I have been told, “Well, but the brickwork has not been pointed for some time, and looks dingy;” a reply which aptly showed how totally unacquainted the speaker was with the rudiments of the laws of dilapidations. Again, when you are trying to make a money settlement is it not sometimes advanced, “Well, but my client must spend a great deal more than that before the house will be fit to *let*”? as though dilapidations were synonymous with putting premises in good order, fit for a new tenant. With regard to marble chimney-pieces of

an expensive character, a claim has been unsuccessfully made for the value of a new one, where the existing one was damaged only at the edges or chipped. Yet again, I remember a case in which the particulars of the dilapidations were delivered in an action, and contained the following reference to the fastenings of doors:—"These bolts are quite ineffectual to secure the doors. If fastened they could be easily forced open, and being high up they are not easily used;" and in another part in reference to other fastenings which were out of reach of "any person of ordinary height, being 6ft. 9in. from the floor." See how wrong the description, even assuming the surveyor right. Clearly the height of a bolt from the floor could be no dilapidation unless it could be shown that the bolt was found in a different position to that in which it was originally placed at the granting of the lease. Now, to continue the assumption of accuracy on the part of the surveyor who took the items referred to, his language should have been *reinstate the bolt in former position*; or words to that effect; for it is monstrous to assume that if in an original construction a builder put a bolt where it cannot be easily used that such can be a dilapidation. IT CANNOT; while it would be a dilapidation to remove a bolt from its old position. Of course such points are very trivial, and the majority of surveyors would have great contempt for those who use such trivialities to *swell* their particulars of dilapidations; still I must remind them that a lengthy document does influence lay judges and juries, for I recollect once hearing a jurymen say, "Well, if it takes all that quantity of paper to explain the breaches, there *can't* (*sic*) be no (*sic*) question, there's no defence"; and I never shall forget the laboured efforts of counsel to explain that though of such a length, many of the items were not dilapidations at all, and others were really most minute repairs. No doubt most of my readers can recall similar instances, where in resisting unjust proceedings, they have been met by most minute and at the same time most technically accurate schedules. Where, for example, small scratches on painted back doors (by a dog possibly) are entered, "touch up the damaged paintwork of back door, top grain and revarnish," a rather formidable paragraph, because a pet dog was kept longer out than he liked. Among my very early re-

collections, is one firmly fixed in my memory of a dispute between two surveyors, one certainly well-known and respected, when an item in the schedule of dilapidations in respect to the drawing-room was "provide and lay a new front marble hearth in lieu of present broken one." Well, I confess I could not see the defect with my pupil eyes (no pun intended, I assure you), but it was in those now far-off, never-at-the-time appreciated days when I was in my pupilage; and yet I am sometimes tempted to be angry at people always speaking in adulation of things and days past, because no doubt all past times and events are only good and pleasant because we *now* understand them, as some ten years hence we shall understand the events of *to-day*, while to-day we are fretting and fuming and believing all human nature unappreciative and selfish—then (ten years hence), when old age creeps on us, perchance we shall talk of the pleasures of ten years since; of the delight of conquering difficulties; of having no weak sight, no incapacitated limbs to hinder us in the great fight of progress; no worrying complaint (chronic, no doubt) which always checks us when we are most anxious to do good work. But I must not digress; I only thought that such reminiscences as these make us more contented, and such as lead to this result are much needed in this day. Well, to continue this early experience, even the surveyor who had to support his claim could not at first find the flaw, but pointed out a vein in the marble. This being shown to him not to be a crack, on a second examination he discovered the crack, when the other surveyor replied, "Do you insist on that? You must have taken the dilapidations with a magnifying-glass." The result may be imagined: a reference to an umpire. One last case I would mention. There is usually the covenant to paint at a fixed period. Well, will it be believed in an arbitration a surveyor stated that year by year the liability accrued? Thus, suppose the covenant be "paint once in seven years," that at the end of the first year after the painting had been well and properly done, *one-seventh of the cost* of the painting of the entire house has become due, and was a dilapidation, and when pressed by counsel with the proper question, "How, sir, then, can this dilapidation be avoided?" he replied he did not know, but still held that it

was an accruing dilapidation. So peculiar a dilapidation necessarily astonished the skilled witnesses present, and we all listened eagerly to the reply to the next question, "Would, in your opinion, then, the dilapidation be met by painting properly one-seventh of the house each year?" While the witness seemed at a loss for a reply, and somewhat, I think, or at least hope, awakening to the absurdity of his proposition, the umpire decided the question was unnecessary, "as it clearly meant that the entire house should be painted once in seven years," and he therefore *held* "it would not satisfy the covenant to paint parts at different times, but the *house* must be *painted* throughout once in the time stated in the lease." Therefore we lost the explanation we longed for. It still remains a mystery how any one could conceive the idea that a liability which only arose at a fixed period could be divided, so as to arise a portion yearly, *without* the person responsible having the slightest power of satisfying it, or preventing his being deprived of the property. I might continue *ad infinitum*, but surely I have given enough instances, without multiplying them, to show how often we have to meet those gentlemen whose ideas of dilapidation and waste are, shall we say, *peculiar* (though the foregoing observations, while they illustrate the want of information on the subject, should also be read as useful hints of those false claims which are to be avoided). I believe we can remedy this by making these pages the means of circulating far and wide, in a concise form, an explanation of what really dilapidations are. We shall thus make more certain the opinions as to what they consist of, and confirm the proper and fixed fundamental principles to guide the profession in their decision. That such is not the case at present, if these few remarks are not sufficient to prove, I will cite a case where an old friend of mine (a well-known surveyor), had (as trustee) a number of cottages, the lease of which expired, when a claim was made for between six and seven hundred pounds for dilapidations. In alarm he went to survey the premises, and carefully made his estimate, amounting to less than one hundred pounds. There being no chance of settlement, an action followed, and the matter was referred in court to one of our leading surveyors, whose award amounted to within £20 of my friend's

estimate. Imagine, reader, the difference! Why, builders' variations in tendering are most limited compared to this. Where have you seen one tender seven times larger than the lowest? And yet the builder should be much more liable to err than the surveyor. The builder does not know the architect; is afraid he may not get from this particular architect his certificates fairly; thinks the drawings are more elaborate in the hurry of tendering than they are (perhaps because they are more fully shown by detail drawings than he is accustomed to); has, perhaps, plenty of work to do, and therefore all his plant employed, and will have to hire plant for the job should his tender be accepted; will have to employ a new foreman, with the chance that he may not be so energetic as he ought to be. Now the competing builder whose tender is lowest may have these points in his favour, and they may somewhat explain the *difference* between his tender and the others. He knows his architect to be a just while painstaking man; that he shows every minutiae in his drawings, is prolix (or *very full* is a prettier way of expressing it) in his specification, and that he has a great objection to any builder losing money by his contract through the slightest chance of misunderstanding all the details he requires executed. All honour to such a man! though I have only sketched the characteristics of, I firmly believe, the great majority of my profession. Well, can you wonder, although you see sometimes the tenders published in our journals with as many as three or four notes of exclamation after the lowest tender—can you wonder, I say, at the large differences which have so many and such varied causes to produce them? But where there can be no reason for difference—where none of the *causes* exist which much explain the great differences in the tenders of builders, how are we to explain the enormous differences that are daily thrust before our notice in the value of dilapidations and waste? I conceive we can only do so on the assumption I have already advanced, which is, that there is an utter want of realisation in the minds of surveyors of the fundamental bases which must guide all decisions as to what *are* dilapidations, and how the *quantum* is to be arrived at. If I were to ask the question "Define what are dilapidations?" many would reply: "Of course I know—ha, ha, of course—

ha, ha, dilapidations are dilapidations—waste, you know—that sort of thing.” Pray understand I am not in the least speaking disparagingly of our profession; but as I have before remarked, we have such varied work to do—to-day a prison; next a mansion in the country, with all its difficulties of drainage and water supply, and that, with half the money to expend, it must be more striking and showy than Lord So-and-so’s; next schools, money again limited, subscriptions not coming in so freely as expected, and our plans must be so made as to pass the stringent requirements of the great authorities. Next, perhaps, designs in competition for baths and wash-houses are required. Then a public-house, which must have excessive show at limited cost. Then a survey for buying and afterwards laying out land for building purposes. Then, perhaps, an elaborate design for a reredos. But why continue? I only desire to show that the extended and varied requirements of our profession will certainly excuse any slight want of knowledge in its professors, unless they devote themselves with painful earnestness to conquer.

But I must keep close to my subject, and first let me give the definitions of Dilapidations, then of the different kinds of Waste.

First, then, I think Bacon’s definition good. It is “the committing of any spoil or destruction in houses, land, &c., by tenants, to the damage of the heir, or of him in reversion or remainder.” *a*

Next, the best legal definition, I find in Grady’s work, and is as follows:—“Dilapidations or waste may be defined to be the act or default of the party having a usufructuary interest in the lands or tenements of another, by which the property of that other is injured or deteriorated.” *b*

Good as the above definition is, I confess I prefer, for our practical guidance, that given by our Institute of Architects in their report. *c* They say “they are of opinion that dilapidations.

a 8 Bac. Abr., tit. “Waste,” 379, 7th ed.

b Grady, Book 3, ch. 1, 2nd ed.

c Report of Select Committee on Dilapidations, 1844.

are, in usual practice, considered to be those defects which have arisen from neglect or misuse, and not to extend to such as only indicate age, so long as the efficiency of the past still remains. But if the effects of use or age have proceeded so far as to destroy the past, or its efficiency in the structure, this argues neglect or misuse; it being the presumption that at the commencement of his term the tenant was satisfied that every part was sufficiently strong to last to its close."

The full meaning of this term is so important that I am tempted to give the definition of that old authority David Gibbons, who in his work, "A Treatise on the Law of Dilapidation and Nuisances," 2nd edition, 1849, thus describes it:—"Dilapidations, or rather waste, may be defined as the act or default of one party having a right to use a tenement to the injury of another having a right to the same tenement."

Let us next take the definition of WASTE. Probably Webster's dictionary gives a more easily understood meaning than the writers on the subject. "In Law, spoil, destruction, or injury done to houses, woods, fences, lands, &c., by a tenant for life or for years, to the prejudice of the heir, or of him in reversion or remainder."

In les term d... ey, tit. "Waste," it is said, "Waste is, when tenant for... of years, tenant for life, tenant for term of another's life... t in dower, tenant by the courtesy, or guardian in ch... , doth make waste, or destruction on the lands, that is... , pulls down the house, or cuts down timber, or suffers the... use willingly to fall, or digs the ground."

Blackstone, in defining it (2 Com. ch. 18), says:—"Waste is a spoil or destruction in houses, gardens, or trees, or other corporeal hereditaments, to the disherison of him that hath the remainder or reversion in fee simple or fee tail." a

Next Grady, in his work on the subject, says that "Whenever there is a particular or limited estate in lands or tenements which must, after the determination of such estate, devolve upon another, any defect in their condition is properly dilapidation,

and the act of permitting or committing such defect is called waste." *a*

An able definition is also given in Cruise's Digest, where it is said that "Although tenants for life are entitled to reasonable estovers, yet they are prohibited from destroying those things which are not included in the temporary profits of the land, because that would tend to the permanent and lasting loss of the person entitled to the inheritance. This destruction is called waste."

There are three species of waste—permissive, voluntary, and malicious.

Gibbons divides permissive waste into five sorts, thus—

1st.—The neglect to repair the necessary effects of time and use.

2nd.—The neglect to repair the consequences of inevitable accident.

3rd.—The neglect to repair the external or internal coverings of a building.

4th.—The omission to protect the fabric of the building from the consequences of dilapidations in the coverings.

5th.—The omission to prevent the wrongful act of a stranger.

Grady speaks of several kinds of waste, but only in his definition mentions two—namely, voluntary and permissive. Voluntary waste he defines as acts of commission; permissive waste as acts of omission.

It will be of little value to follow the nicety of distinction, as the penalty, no matter under which class they may be placed, is the same; still it may be well to remember that permissive waste consists in the neglect to supply those dilapidations which are the necessary effects of time and use, or those which are merely occasional or accidental.

Suffering houses to be uncovered whereby the rafters or other timbers become rotten, may be mentioned as an example of this class of waste; but the authorities give it that the *bare* suffering them to be uncovered,

a Grady, 2nd ed., book 3, ch. 1.

without rotting the timber, is not waste; so if a house be uncovered when the tenant cometh in, it is no waste in the tenant to suffer the same to fall down .

Voluntary waste consists in altering a tenement. It is no defence to say that such alteration increases the value of the property, and for this reason says Gibbons :

That the act of alteration exceeds the right of use, and infringes on the right of the grantor, which is to have the tenement in the same condition as when granted, as near as can be; and although the alteration may increase the merchantable value, it may not be an improvement in the eyes of the grantor, or may impose upon him an additional charge to keep the tenement in good condition.

Having then fully defined dilapidations and waste, and *what they are*, I will next consider *how they are practically to be dealt with*.



CHAPTER V.

METHOD OF TAKING DILAPIDATIONS AND WASTE—IMPORTANCE OF FAIR WEAR AND TEAR LIMITED—THE ACT OF PARLIAMENT 8TH AND 9TH VIC., C. 124, MENTIONED WHERE THE COVENANTS ARE ABBREVIATED—WHAT THEY MEAN GIVEN IN EXTENSO—ADVANTAGE POINTED OUT THAT WOULD ACCRUE FROM THE USE OF THIS ACT—ITS RARE USE ILLUSTRATED—PROPER REPAIRING COVENANTS—WOODFALL'S—THE SELECT COMMITTEE APPOINTED BY THE ROYAL INSTITUTE OF BRITISH ARCHITECTS—RESULT OF INVESTIGATION—USUAL COVENANT—AT WHAT PERIODS INSIDE AND OUTSIDE PAINTING ARE USUALLY FIXED—THE CONSIDERATION OF QUANTITY OF DILAPIDATIONS HAVING REGARD TO USUAL COVENANTS—OUTSIDE OF PREMISES—SECTIONS 1 to 10 INCLUSIVE—INSIDE OF PREMISES—SECTIONS 11 AND 12—ROOF—CHIMNEYS, RIDGES, HIPS, AND VALLEYS—GUTTERS—COPING—TILING AND SLATING—TRAP-DOOR—ONE STORY CONSIDERED — SASHES AND FRAMES — SASH-LINES — GLASS — FASTENERS—SILLS AND OTHER PARTS INJURED FOR WANT OF PAINT—POINTING ROUND FRAMES—BEADS—SHUTTERS—ARCHITRAVES—CEILINGS—WALLS—MANTEL PIECES—HEARTHES—CORNICES — SKIRTINGS — SPLIT PANELS — DAMAGED MOULDINGS—STRUCTURAL AMENDMENTS—PAINTING AND GRAINING—FORTIFY OPINION—LANDING—STAIRCASE—HANDRAIL AND BALUSTERS—HOUSINGS—WINDOWS ON LANDINGS—CUPBOARDS—NOSINGS TO STAIRS—STONE STEPS, CASE MENTIONED TO ILLUSTRATE—BASEMENT—CELLARAGE — PANTRIES—LARDERS—DECAYED JOISTS—VAULTING—PAVING IN YARDS.

THE surveyor will first inspect the front of the premises of which he is required to take the dilapidations; next in order are the roof, chimneys, and party walls; then the top floor in the house; next, the staircase from that floor to the floor beneath, thus taking floor after floor until he reaches the basement, or the floor in which the kitchens, &c., are situate. Having inspected these, and made memoranda of all the require-

ments, next he will take the dilapidations of back-front, then the back-yard, and, lastly, out-buildings. It is most important always to take the items in the same order, because, in giving evidence, one can also find out where the item appears; and, therefore, in taking the list, if a room cannot be seen from any reason (such as tenant being out or ill), it will be found a good plan to leave a space, so that when the dilapidations can be taken they may appear in regular order in the schedule; if this be *not* done, it will be well to make a reference to the place where the items may be found. The above is the usual order, and should be strictly adhered to. I will now proceed to point out the most usual dilapidations; but my reader must remember that they will vary in every house, and that, therefore, he must use most scrupulous care, or he will unintentionally injure his client's interest. He should remember that, in the result, it is not of much consequence to his client whether he is injured by a want of knowledge on the part of his surveyor, by his carelessness, or by his dishonesty. It therefore behoves every one to try and thoroughly understand, and be master of, his profession, so that his client may not suffer by the former of these causes; he can always *then* be certain whether or not he is doing his duty.

Knowing the order in which the dilapidations are to be taken, and having book, pencil, 2ft. rule, and a copy of the covenants to repair and to yield up with him, the surveyor will do well to read most carefully the covenants, as they vary very much in stringency. To give one example: I remember a lease at a very small ground-rent, for a term of 80 years, in which the repairing covenant was limited by the words "fair wear and tear excepted," and it was contended that such a covenant gave the lessor no right to require any reparation except waste. This is *not* so; but I mention the case to show how necessary it is carefully to study the covenants. Perhaps it will be well here to give the usual wording of the covenants. First, I think I should mention what is not generally known, but which may somewhat trouble the surveyor. A lease may be made under an Act of Parliament, the 8th and 9th Vic., c. 124, which, if it uses certain expressions, means *more* than expressed, as thus written:—

And to repair :—

MEANS, AND MUST BE SO CONSTRUED, “and also will, during the said term, well and sufficiently repair, maintain, pave, empty, cleanse, amend, and keep the said demised premises, with the appurtenances, in good and substantial repair, together with all chimney-pieces, windows, doors, fastenings, water-closets, cisterns, partitions, fixed presses, shelves, pipes, pumps, poles, rails, locks and keys, and all other fixtures and things which, at any time during the said term, shall be erected and made, when, where, and so often as need shall be.”

Again : And to paint outside every — year :—

“And also that the said lessee, his executors, administrators, and assigns, will, in every — year in the said term, paint all the outside woodwork and ironwork belonging to the said premises with two coats of proper oil colours, in a workmanlike manner.”

And again : And to paint and paper inside every — year :—

“And also that the said lessee, his executors, administrators, and assigns, will, in every — year, paint the inside wood, iron, and other works now or usually painted, with two coats of proper oil colours, in a workmanlike manner; and also re-paper, with paper of a quality as at present, such parts of the premises as are now papered; and also wash, stop, whiten, or colour such parts of the said premises as are now plastered.”

Remember, in the deed it *must* be expressed that it is made in pursuance of this Act. I only recollect one instance of having to value dilapidations under a lease made in this form. I mention it, however, because, now that solicitors can arrange their costs by the recent Act of Parliament upon a different basis to the old system, it is probable it may be generally adopted; it could hardly be expected that when everything was paid simply by its length, that the legal profession would eagerly adopt an

Act which lessened their profits. It would be a great boon, however, should this Act become general, as it would give uniformity of covenants, and thus help to make dilapidations a more *known quantity*. We must, however, deal with things as they are.

Woodfall considers the following to be the proper repairing covenant in a lease :—

“AND ALSO will, during the said term, well and sufficiently repair, maintain, pave, empty, cleanse, amend, and keep the said demised premises with the appurtenances, in good and substantial repair, together with all chimney-pieces, windows, doors, fastenings, water-closets, cisterns, partitions, fixed presses, shelves, pipes, pumps, pales, rails, locks and keys, and all other fixtures and things which at any time during the said term shall be erected and made, when, where, and so often as need shall be : AND ALSO will in every — year of the said term paint all the outside woodwork and ironwork belonging to the said premises with two coats of proper oil colours in a workmanlike manner : AND ALSO will in every — year of the said term paint the inside wood, iron, and other works now or usually painted with two coats of proper oil colour in a workmanlike manner ; and also re-paper, with a paper of a quality as at present, such parts of the premises as are now plastered ;” and the covenant to leave or surrender at end of term is thus defined : “AND FURTHER, that the said lessee, his executors, administrators, or assigns, will, at the expiration or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor, his heirs or executors, administrators, or assigns, the said premises hereby demised, with the appurtenances, together with all buildings, erections, and fixtures now or hereafter to be built or erected thereon, in good and substantial repair and condition in all respects.” *a*

The Select Committee on Dilapidations appointed by the Royal Institute of British Architects, in their report stipulate nearly the same covenants as the foregoing. They state that

a Woodfall, 9th ed., chap. 29, sec. 12.

they had invited her Majesty's Commissioners of Woods, Forests, and Land Revenues, the Corporation of the City of London, many of the principal chartered companies of London, and other corporate bodies, and the agents of several noblemen and other owners of large estates, to send them copies of the covenants usually required by them, in their respective leases, to be entered into by the lessees in respect of repairing, rebuilding, and surrendering the erections and premises leased therein, and having compared them they then proceed to give the forms which they consider contain the covenants most usually adopted. They are as follows:—

And also that the said _____, his executors, administrators, and assigns, shall and will, at his and their own proper costs and charges, well and sufficiently repair, uphold, support, sustain, maintain, slate, tile, glaze, lead, paint, pave, purge, scour, cleanse, empty, amend, and keep the said messuage or tenement, and all and every other the erections and buildings now erected and built, or that shall or may be erected and built, on the said piece or parcel of ground hereby demised during all the said term hereby granted—and all pavements, walls, party-walls, fences, pipes, gutters, water-courses, privies, sinks, drains, cesspools, sewers, and appurtenances belonging, or that shall or may be made or belong to the said premises, or any part thereof, in by and with all needful and necessary reparations and amendments whatsoever, when and as often as need or occasion shall require during all the said term hereby granted.

And also shall and will once at least in every three years of the said term hereby granted, in a good and workmanlike manner, paint or cause to be painted all the outside wood and ironwork of the said messuage or tenement, coach-house, stable, and premises hereby demised, and all other parts of the outside thereof heretofore painted, with two coats of good oil and lead-colour at the least. And shall and will in like manner paint or cause to be painted all the inside wood and ironwork of the said messuage or tenement, coach-house, stable, and premises hereby demised, and all other parts of the inside thereof heretofore painted, once in every seven years of the said term. *a*

They will be found to agree almost entirely with "Woodfall," except that where he mentions — years for outside and inside painting; the result of their investigation led them to fix the external painting as every three years, and internally every seven years. There can be no question as to their accuracy in thus fixing the periods for painting. The very large majority of leases are so drawn.

We will, then, consider dilapidations with reference to the usual covenants as thus explained ; the surveyor will, of course, take care to note any especial matter which may arise out of exceptional covenants. He commences thus :—

Front of House.—1st.—Look particularly to see if any open joints of stone parapets, and if brick flat, and brick on edge coping and tile creasing.

Because, if pointing is required, the walls are being permanently injured.

2nd.—See if any open joints in brickwork of main walls, and note what sort of pointing, whether struck joint, or tuck and pat pointing, or what kind.

The object of taking this note is that you may be sure, on a future inspection, if the joints of the walls have been raked out and re-pointed, that it is done in the same manner as when you first saw the premises.

3rd.—The reveals, if cement, see whether they are sound or cracked ; and if painted, the state of the paint thereon.

4th.—Sashes and frames, note the general appearance.

These will be again inspected when you are taking the inside items.

5th.—Front entrance door and frame, other doors, fanlights, wood cills.

6th.—Fencing, gates, area walls and areas.

7th.—Stone steps, stone landings, copings, &c., brick and stone paving ; remember that cracked and broken bricks and cracked and broken stones are dilapidations.

It is well here to mention that it is no answer to say that broken bricks and stones, if cemented up, may still carry off the water ; it is clear that the breakage of stone or bricks is *not* the effect of time, and therefore has required the active agent force to injure it, consequently it must be a dilapidation. A settlement might produce it, it may be advanced ; but then this proposition is met by the rejoinder, " Well, but how did the settlement occur ? " Through negligence of the fabric by the lessee most likely. Still, if this be so or not, the almost invariable custom is that broken stones are dilapidations, and I think most justly ; what is demised should be re-

turned entire, and no one can say that broken pavement is so pleasant to walk on or in appearance as that which is sound.

8th.—Gravel walks, see that they are fairly kept free from grass, &c.

9th.—Garden and grounds, fields, pasture and arable.

These dilapidations are more difficult to the London surveyor, because they less frequently come under his notice. I have shown by the authorities that no difficulty exists in taking the covenants in town leases and agricultural leases as to the houses and buildings; but in assessing the land, where the covenant is in the usual form, "and shall in all respects farm in a husband-like manner, according to the custom of the county in which the land is situate;" and where no covenant exists, as in the case of a yearly tenancy, recollect the law implies the existence of this covenant. Well, the surveyor, by inquiry, must find out what is the custom of the county; and a warning here may advantage him. The custom of the county cannot be inferred from the custom on *one* estate, no matter what extent that estate may be. The most limited interpretation I think that can be found of good husbandry is that no two crops of what is called white gratten shall directly follow each other; that where, for instance, wheat, barley, or oats are one year, the next crop shall be roots, artificial grasses, or a fallow, or partial fallow; that all hedges shall be kept trimmed, and gates and fences, so that they answer the purpose for which they were put up. This is the very easiest construction that can be put on the covenant. It will, however, sometimes be found that a fallow is the custom every — year, and the value of this fallow is large, because it is presumed to be more efficacious than manure by some. There is, therefore, the value of the manure, and to be added thereto an indefinite sum to cover the *opinion* of the county, which is really the guide in this instance. *a*

10th.—If any lodges, or other buildings in addition to the house, every such building will have to be treated exactly as the main building, and the same routine will have to be adopted in taking the dilapidations. *b*

Next we come to the inside of the premises, and I think it will aid my reader if I continue to number each item; I therefore do so.

a Womersley v. Dally, 26 L. J., ex. 219.

b Dacre v. Cole, 2 Vent., 126. Douse v. Earle, 3 Lev., 264.

11th.—First go on to roof ; you must not mind the difficulty, the unpleasantness, and dirt ; usually the easiest way is through the trapdoor leading thereto from the attic. Specially notice the brickwork of chimneys, if any open joints, if stack upright, if any chimney pots deficient, if flaunchings to pots defective, if pointing of inside of parapet walls good or bad, if pointing of those portions of party or external walls which can be seen from roof are defective ; then see to ridges, hips, and valleys, if sound or loose, if any nails defective ; then the lead and iron gutters, if the fall is correct, or if rendered imperfect through any sagging of woodwork below. In this case the requirement will be, take up the lead or zinc gutter (as it may be) fir up joists and relay same, also see if roof timbers have sagged. Next if any stone coping defective, if the lead or other cramps to same are perfect, if any open joints of the stone or brick coping, if cement coping be in order, and, if it has been before painted, the state of the painting. If (and this is a very important, because a large item) the slating or tiling is in order, if any slipped slates or tiles, if the pointing of tiles (pan) is good and sound, if slating is perfect ; try as a test one or two slates, you can easily find out if the nails are *gone*. I may here observe that great expense may be necessary where at some time in repairing a slated roof iron nails have been used instead of copper or zinc, the iron corrodes entirely in a comparatively short time, and the only way the slates are retained in position is simply by their weight. A heavy storm will, therefore, remove them, and great and undeserved expense may therefore fall on the lessor at end of term if this is not tested. Lastly do not forget the trapdoor by which you gained access to roof, generally you will find it wants painting. Now we come to the inside. One story so much resembles the other that to save space I shall illustrate the mode of taking internal dilapidations to one floor and one flight of stairs.

12th.—Inside : First, always look at the

sashes and frames; if any sash lines broken; any glass cracked or broken (in inferior rooms it is usual to allow one crack to pass, but in the best rooms, as reception rooms, this does not obtain); if the sashes will open properly; if the fasteners are defective or in proper working order; if the sashes, frames, or cills are decayed or being injured for want of paint, if the pointing round frames is defective; if outside and parting beads are perfect. Next the shutters, if in working order, if fastenings perfect, if the architrave mouldings are in good condition. Next the state of the ceiling of the room, if any bulged or loose plastering (this would require the entry in book if very bad), "cut out defective, loose, or bulged (as the case may be) plastering, relath, prick up, float, and set and twice whiten, &c.;" but where the ceiling is not so bad the item would be, "wash, stop, and whiten." Walls come next. See if the plastering is perfect, then the papering or colouring; if paper torn, or merely soiled.

If there is any *time* mentioned in lease when the re-papering should be done, it will be wise, by inquiry, to try and confirm the judgment, where the chance of uncertainty exists in the mind, whether it has been done during the prescribed time.

Remember, if in doubt, it is usual, as in criminal trials, to give the benefit of the doubt to the prisoner at the bar, which in dilapidations means to the lessee.

The next items are mantel-pieces, and here care is required in dealing with the more expensive kinds. For instance, a mantel-piece worth, say, 100 guineas, may be almost destroyed by an injury that 5s. or 10s. would remedy in the commoner sort. See if jambs or mantel or mantel-shelf are chipped or cracked (I may mention in old houses, cracked mantels and jambs are of frequent occurrence). Then follow front and back hearths; these will very often be found to be cracked, especially in the smaller class of house, where the front hearth is often used to chop the wood for the fire on—this, though to some it may seem in-

credible, is *really* the case ; make a note if of stone, cement, or marble, and if marble, what kind. Next, cornice and skirtings ; see if any enrichments are deficient of the former, or any injury done thereto by nails or window cornice poles, &c., as to the latter what injury done by chairs to paint or mouldings, then doors of the room and take cupboards (if any), see if any split panels, cut or damaged mouldings ; if fastenings, knobs, handles, and locks, in good order. Next, see if the floor is sunk (then note the cause and quantity) or decayed. It will be some guide to notice where the skirting joins the floor boards, as where the walls have bulged it will sometimes be found that there is a vacuity between the end of the floor and the skirting, which may require structural amendments in the fabric to rectify. Lastly, the painting and graining ; note the age, and state, if chipped, if "worn to wood." Sometimes if work grained, it will be sufficient, to meet the covenant, to require that the grained work shall be touched up, top grained, and twice varnished ; but here judgment is required. Always FORTIFY opinion and judgment by facts when you can. This is good advice.

After the rooms are taken, first, the front room or rooms, then the back room or rooms, take the landing and staircase leading from that floor to the floor below. Begin at the landing, ceiling, or the soffits of the stairs ; (in the top floor notice if ceiling damaged by the wet) ; then the walls, if plastering sound ; next the paper, if paper varnished and defective, specially note that the new papering must be varnished. Take account next of handrail and balusters, if any deficient, if stringing sound, and the wooden steps have not by any settlement been drawn out of the housings. Do not forget the windows on the landings, taking the items in the same way as the windows in the rooms already described. Then all doors and cupboards, and their locks and fastenings. The room doors will be limited, of course, to their external face. Next the steps : see if nosings and treads are in proper condition. If stone,

note if so worn as to be dangerous. I may here mention an example of a stone staircase in a newly-built house. It was let to a gentleman, and he kept a school there ; and the stone staircase had no covering. At the end of twelve months he wished to leave, and I think I never saw so awkward or dangerous a staircase, through the constant use by boys ; nor could the tenant understand that it could be any dilapidation ; although he had not even the excuse that it was let to him as a school. He admitted nothing was said at all on the subject, and his landlord might have believed he wanted the house for a private dwelling.

One floor, then, will serve as an example for all the rest. In the basement it will be necessary to remember to visit all the cellarage, pantries, larders, and other places ; it will also be sometimes found that the joists are decayed through dry rot. I may here mention that all rafters, ceiling, and flooring joists, and other timbers should be viewed as far as they can on each floor to check their soundness ; and in vaults be particular to see that the vaulting is in good order. In yards the paving will require particular attention. All cracked and broken stones should be taken with their measurements if the object of the survey be to make a valuation.

I think I have fully explained *how to take dilapidations*. I therefore propose, lastly, to schedule under the different TRADES the respective dilapidations, so that it may be at all times most easy for reference where any doubt arises.



CHAPTER VI.

DILAPIDATIONS SCHEDULED UNDER TRADES—PECULIAR COVENANT GIVEN—EXPLANATION AND DIFFICULTY OF DECISION THEREON—ENDEAVOUR TO FIX A DATA TO GOVERN BULGING AND BATTERING WALLS MENTIONED—BRICKLAYER AND TILER—SLATER—CARPENTER AND JOINER—MASON AND PAVIOR—PLASTERER—PLUMBER AND ZINC WORKER—PAINTER—GLAZIER—SMITH AND IRONMONGER—PAPERHANGER.

IN the schedules of dilapidations which I have classified under the various trades, and which we have now to consider, it must be borne in mind that they are based upon the covenants set forth in Chapter V. and therefore any unusual or different covenants must be carefully noted, and will of course form a deduction therefrom or addition thereto. In the preceding pages the reader will find nearly every covenant explained but the following:—"And to keep the said messuage or tenement and hereditaments, fixtures, and premises, at all times during the said term in good and substantial repair, and in thoroughly clean and good condition. And to paint all the external wood and ironwork belonging to the said messuage or tenement and premises once in every five years of the said term, with two coats of good oil colour, and in like manner to paint the internal wood and ironwork of the said messuage or tenement and premises, once in every seven years of the said term." I am tempted to mention this covenant, because it certainly much puzzled the lay arbitrator; the various surveyors gave most varied "readings" of its value and meaning. Some explained that it merely meant keeping the walls fairly coloured and papered, and the ceilings whitened, and the paintwork cleaned, while some contended it was a most stringent covenant, and that beyond ceilings, walls, and paintwork, it meant the washing of the floors and staircases, the cleaning of windows, the removal of dust and rubbish, and required the seeing that all those matters and things which are usually the work of the

domestic servants of the establishment were done. The covenant is, no doubt, properly explained by those who held that it did not relate to these last-mentioned items.

The reader should note the explanations given in the smaller print, as they contain much that will assist him in his practice.

One point I would call especial attention to—it is the endeavour I have made to aid the judgment in determining dangerous walls by the use of figures. The result of the calculation shows that an ordinary brick wall which bulges or batters 1 in. in the foot is insecure. Unlike all the rest of my statements, this must be received only as an opinion. There is no data fixed that can guide, not even so much as there is in light and air cases, where the angle of 45 degrees does give some basis to work from.

The numbering of the tables is continued from the preceding tables.

TABLE XV.—Bricklayer and Tiler.

All open joints to brick flat, brick on edge coping to walls, all loose, broken, or defective tiles, all defective filletings, all defective tile creasings, external pointing to pantiling.

See if the roof has been pointed before, for it is sometimes the cases in outbuildings that the pantile roofs have not been pointed. In such instances the pointing cannot be claimed, for the reason already explained—viz., you cannot require the premises to be made superior to the original construction.

All brickwork so much out of the perpendicular, or so cracked, split, or bulged as to render them unsafe or incapable of being effectually repaired.

It is very difficult to give exact figures to guide the decision as to when a wall is *so much* out of the perpendicular as to be unsafe, and all the authorities leave the practitioner to decide for himself; but as this necessarily leaves so much to individual judgment, I have endeavoured to give some data to guide. Suppose a wall 40 feet high, upright for 20 feet of its height, and overhanging at the top 1 ft. 8 in.; this gives an inclination of 1 in. in the foot, which may be taken as so far out of the perpendicular as to be unsafe in ordinary brick walls. Take the same diagram and draw the wall overhanging

only one-half—i.e., 10in. In this case I should say the wall is not so far out of the perpendicular as to be unsafe. Next make a section to a large scale of a wall 80ft. high, battering or overhanging half an inch in the foot from the base to the top, and the rule will be still found to apply. It would thus be a good rule, perhaps, to adopt—safety where only half an inch in the foot out of perpendicular, insecurity where in excess. But this rule must only be used as guide, and in helping to form a decision, as at present it is not an accepted dogma.

Split or broken chimney pots, loose chimney pots (must be refixed), all open joints of brickwork, broken brick paving, defective and sunken paving, foul drains, cesspools (which require emptying), all accumulations of earth, soil, and rubbish; sash frames and door frames, pointing to same where defective.

TABLE XVI.—Slater.

Slates, if loose, broken, or defective.

As already mentioned, it will be wise to test that the nails are not rusted or otherwise defective. The reader will do well to refer back to those observations.

Where timbers, laths, or boarding, broken, sagged, or otherwise defective, the slating or tiling must be taken off to enable the reinstatement of the former to be properly done, and then the slating or tiling must be properly relaid.

Ridging, if defective or deficient.

Shelves, slabs, pavings, if broken, loose, and, as to the latter item, if out of the level.

TABLE XVII.—Carpenter and Joiner.

All woodwork decayed or injured by the admission of weather.

It will be well to see especially that the purlins, or the feet of the rafters, are not so injured.

Any broken timbers of any kind.

All timbers injured by dry rot.

All timbers (joists, rafters, &c.) where out of the level or perpendicular, provided the same arises from decay or neglect.

Broken laths.

Loose, broken, or decayed weather boarding.

Wooden gutters.

Water trunks.

All boarding to dormers, roofs, gutters, flats, &c., if decayed or sunk.

This latter dilapidation will be met by the words "take up and relay sunken parts," &c.

Skylights if decayed.

All sashes and frames where cill decayed, sash-lines, broken or missing, beads deficient or broken, pocket pieces defective, bars cut, rails decayed, where tenons gone and mended with angle iron. (Note.—In the report of the Select Committee on Dilapidations they give it as a dilapidation if sash-lines are broken only in the strand, but in my experience this is not generally the practice; so long as the sash-line will fairly fulfil its functions, it is usual to pass it.)

Doors and door frame; split panels in doors: any injury to stiles or rails by removal of locks or fastenings. Treads of stairs where nosings much worn or broken.

This dilapidation will be met by "new nosings to treads," unless the treads be wholly defective, it will then require "new tread." Where, as sometimes will be found, the tread is so worn that the top of the riser becomes used by the foot, no question should arise in the mind of the surveyor, it being so obviously a glaring dilapidation; as the riser is being used for a purpose foreign to the original and usual intention. One is led to mention it as a recollection of instances of practice occur to one's mind.

TABLE XVIII.—Mason and Pavior.

Copings, if broken or defective, if displaced by any settlement.

It is usual where there are broken stones to allow the broken parts to be squared off, and thus only find fresh stone to complete the length. This, where the coping is of great length, will much lessen the expenditure necessary to satisfy the covenant. Be sure and take all copings, those of gables and chimneys, if any, as well as parapets.

Curbs and channels if broken or defective. Same remarks apply as to the copings ; in addition such stones must be reinstated as do not afford proper fixing for the ironwork.

Sinks and sink stones if broken or defective.

Steps and landings, external and internal, if broken or so much worn as to be dangerous in passing up and down ; if nosings broken. (Remedy.—The rule *obtains* to allow the piecing, where this can be done in an efficient manner, to broken portions of steps. Where nosings are broken or treads are worn down to the extent above mentioned, then such piecing will require to be thus done : cut out the upper surface and fill in the depth of the nosing with a slab of the same kind of stone of sufficient thickness to form a new nosing.)

Walls or other masonry if loose must be refixed.

Paving, if loose or sunken ; if broken, deficiency of stones to be supplied.

Chimney-pieces, if broken, or chipped, or stained.

Stains must be removed.

Hearths and back hearths, if broken, cracked, or sunken. In latter case all that will be necessary will be the taking up and relaying.

Pointing, if decayed or joints open.

Cramps, if defective or deficient, or the lead running be defective.

Ashlaring and all other stone work, if broken, or pieces out through frost or other causes, or otherwise materially damaged.

It is important to remember that all stone work (whether plain or ornamental) of every kind may be made good by filling in pieces of the same kind of stone wherever this can be done in a sound and efficient manner.

TABLE XIX.—*Plasterer.*

Ceilings, if cracked, bulged, or stained.

If not very bad, it will be sufficient to require the ceiling to be washed, stopped, and whitened. If very bad, then defective parts must be cut out.

Walls, if the plastering be loose or bulged, that part must be cut out. Remember this will necessitate fresh papering or colouring.

Enrichments, mouldings, skirtings, and cornices, if defaced.

A hint here may be well. Look if any of the enrichments be deficient; it will often be found that some have fallen down and never been replaced.

Cement work of external fronts and other external work, as copings, cornices, trusses, caps, cills, plinths, stringings, and dressings, reveals, &c., if cracked, blistered, bulged, or broken away.

Cement paving, if cracked, sunk, or not having the original fall to allow the water to run off.

Concrete paving—the same remarks apply.

TABLE XX.—Plumber and Zinc Worker.

Lead or zinc gutters or flats or flashings, if loose or damaged, cracked or deficient.

Properly soldering the cracks will satisfy the dilapidation of cracks in lead and zinc work, provided so doing will make good sound work. The gutters will require taking up and relaying where the boards or bearers require reinstating to enable that to be done.

Flashings, ridges, hips, valleys, aprons, dormer tops and cheeks, cisterns, cistern heads, rain-water pipes, sinks, and all pipes, if loose, deficient, cracked, or damaged.

The same remark will apply here as to the preceding items.

Water-closet apparatus, soil pipes, traps, safes, pans, pumps, &c., if out of order must be made to fulfil their respective uses. Water-closet pans must be cleansed, if necessary.

TABLE XXI.—Painter.

Painting external, if wood or iron, stone, compo, or other work, is being injured.

It is an undisputed dilapidation if it can only be shown that external wood, iron, or other work, is being injured by the omission of painting. Even without reference to the point of painting at certain periods as irrelevant here, it is certain all the decisions make it positive that where external work is exposed through the absence of paint—*e.g.*, where decay is arising—it is a dilapidation, for that which damages the estate permanently, must be waste or dilapidation. Call it what you will, it is an injury to him whose estate the holder has only an usufructory right of; and therefore if permanent injury can be shown, it is no answer *even* to say, "Well, it has been painted during the prescribed term," and there can be no stronger mode of expressing this liability. The estate must be upheld, and if from peculiar circumstances, as from the aspect and exposed position of the premises, the paint is not so enduring, and the usual covenants only are inserted in the lease as to painting, it is no answer to say *covenant complied with*, if wood rotting, or other work being injured by exposure.

Painting internal, if not painted according to the covenant—if not in proper fair condition where no covenant.

In the Report of the Committee of the Royal Institute of British Architects, they say where no especial covenant for internal painting, *no internal painting* can be demanded, except in cases of misuse, and those of renewed wood and other works. I cannot understand how they arrived at this decision, for it is wrong, and mars an otherwise good report. In differing from such a decision it will be wise to quote specially the decision adverse to the report; it is "*Monk v. Noyes*," 1 Car and P., 265, and will be found already recited where I have explained in a foot-note how erroneous this is.

Remember that wherever any kind of work has been previously painted, painting can be again demanded; for example, a compo front may originally have been so left, or may have been coloured, but if it has since been painted, and is defaced, or by fluxion of time the period has arrived for repainting external works, it must be again painted; and

it will be no answer to this requirement to scrape the cement work and colour same.

End this table with a suggestion to the inexperienced, that they will do well when surveying works to see how dilapidations have been executed, to notice whether cracked panels and other defects, which should be rectified by the joiner, have been *puttied* up and painted over to hide defects, because, if so, in a few months' time the old sores will become again exposed, and so their clients naturally will be dissatisfied.

TABLE XXII.—*Glazier.*

This is extremely simple. The rule is in inferior rooms that all squares of glass having more than one crack, in the best rooms all squares having any cracks (see page 39 *ante*) and all broken squares, are dilapidations.

It is, therefore, only necessary to measure the size and take note of the quality of the glass.

Puttying and back puttying to glazing if defective.

Lead lights if loose or damaged. (Remedy.—Reinstate the bandings and cementings where necessary.)

TABLE XXIII.—*Smith and Ironmonger.*

Iron railings, and gratings, if defective.

Gates, if hanging or fastenings imperfect.

Rain water pipes and shoes, gutters, cistern heads, if defective or deficient.

Iron doors, shutters, and frames, linings to doors, locks, latches, hinges, bolts, bars, &c., if damaged or defective, or broken, must be made to act and work properly, and the deficiencies be supplied.

Beams, columns, ties, and supports, if defective.

Railings to internal staircases if defective or broken.

Balconies and balconets, if defective or unsafe.

TABLE XXIV.—Paperhanger.

Paper, if loose or torn or much soiled. Where the papering is hung on canvas and the canvas is torn, the canvas must be first restored. In judging of soiled paper it will be necessary to determine whether the injury arises from neglect or misuse ; because if not no claim can be sustained.

Paper, if not papered in accordance with the special covenant in lease.

I think the foregoing tables will enable the surveyor at all times readily to determine all the points (if the preceding chapters have been carefully read) that can arise in his practice.



CHAPTER VII.

SURVEYORS—THEIR DUTIES—GWILT'S VIEW OF THE OBJECTIONS—
 CANNOT RECOVER FEES IF VALUATION USELESS—WOODFALL'S
 ADVICE AS TO CROSS-ACTION AGAINST SURVEYOR—UNPLEASANT-
 NESS OF THE WORK POINTED OUT—APPRAISER'S LICENCE—
 41 GEO. III., C. 43—CANNOT RECOVER—USUAL COURSE—IF CLIENT
 IS ABOUT TO TAKE LEASE—IF LET ON LEASE AND DILAPIDATED—
 THREE MONTHS' NOTICE—REVISIT PREMISES—PURCHASE OF AN
 ESTATE—TRIFLING DEFECTS ONLY SEEN UNLESS POINTED OUT BY
 TECHNICAL INTELLIGENCE—SPECIFICATIONS OF WORKS REQUIRED
 OR MONEY PAYMENT OFTEN LEFT TO SURVEYORS—PROCESS
 EXPLAINED—DESIRABILITY OF AT ONCE APPOINTING UMPIRE—IF
 TIME IMPORTANT SUGGESTION OFFERED—SCHEDULE BEFORE MEET-
 ING—ADVANTAGES SHOWN—WHO TO MAKE IT—ADVICE ON
 MEETING BROTHER PROFESSIONAL—CLIENTS' QUARRELS—"IPSE
 DIXIT"—CASE OF THE LETTERS O. D. A.—UMPIRE—HOW TO ACT
 AND ADVICE TO.

GWILT, in his "Encyclopædia of Architecture," says:—
 "The architect, in the course of his practice, is frequently
 called upon—and he must undertake the task, however uncon-
 genial to his feelings—to ascertain the extent of neglect of a
 tenant in keeping his premises in proper order according to the
 covenants of the lease or agreement under which he holds the
 property." Certainly the foregoing will not give the young
 practitioner a cheerful view of this part of his profession; but
 there is a more grave question even than personal feelings, as
 the following extract from Woodfall will show:—"If a sur-
 veyor make an estimate, which turns out to be incorrect to a
 considerable amount, and consequently entirely useless, through
 his omitting to take reasonable precaution in forming his judg-
 ment, he is not entitled to recover anything for his plans,
 specifications, or estimates made for his work;" and then Wood-
 fall advises, as the safer course, that the client pay the surveyor

the agreed or demanded sum ; and then continues : "Afterwards bring a cross-action for the negligence and want of due care and skill."

That the architect will often find unpleasantness, I must admit ; but I do not suppose there is more than exists in all pursuits. Of course it cannot be congenial to one's feelings on a hot summer's day to have to enter and stay in rooms of the poor, where ventilation even in summer is looked upon as an unwelcome guest, and carefully excluded ; to clamber over sooty and dirty roofs, to squeeze yourself through cobwebs and unused trap doors ; to go into heated bakehouses and smelting-furnace-houses ; to take details in malting-houses in full operation. But it is not summer always, and in winter my reader may think it is better. Well, it is in some respects : although to find oneself desiring to make entries of dilapidations on roofs, in cut-buildings, empty houses, and extensive fields and grounds on a frosty morning, with the fingers benumbed, would almost make one long for the return of objectionable summer weather. But were these all the objections, they would be light indeed. The real worry and trouble I will explain by-and-by.

A priori, the surveyor should provide himself with an appraiser's licence ; although in all probability he will find it useless, still, it would appear that if he acts as an appraiser within the meaning of a certain Act (46 Geo. III., c. 43) he cannot recover his charges unless he be licensed as an appraiser, or as an auctioneer. It is only as regards his *own* fees that the licence is necessary, and it would be, I should hope, difficult to find a client who would object to pay on *such* a ground.

In ordinary course, the client comes to his surveyor, to say either that he wishes to take a house on lease, or that some property he has let on lease he has seen, and finds out of repair, and wants advice, or he wants to buy an estate, &c. The surveyor will, if it be to take a house on lease, then go carefully over the premises, specially see to the construction (see Chap. V. *ante*) for the method of taking these items and those which follow), and then price out what in money it would cost to avoid dilapidations ; and in continuing the treaty for the taking the

lease, this amount will form a portion of the calculation of value. If the matter be where premises are let on lease, and have been suffered to go to decay, he will visit and take an account of the dilapidations, and if the term unexpired of the lease will permit so much delay, and there seems a fair desire on the part of the lessees to meet the necessary requirements, he will serve the three months' notice to repair. At the end of such time he will again visit the premises, and see if the works are not only done, but also if they are *properly* done. He then reports result to his client. If it be the purchase of an estate, again the duty of the surveyor will be to make a detailed account of the dilapidations, or in some cases a rough estimate will be sufficient for the purpose, and the valuation of such dilapidations should be of great advantage in the negotiation. It will so often be found that vendors and would-be lessors see no defects, or only what they choose to call trifling matters; while if it is surveyed by a professional man and shown in detail, they are generally willing to meet the case fairly. Again, sometimes lessor and lessee, or vendor and vendee, or intending lessor and lessee, agree to leave the specification of works to be done, or the money to be paid or allowed, to be determined by their respective surveyors, or their umpire (to be chosen in the usual manner). This is the very usual mode of settling dilapidations and waste at the expiration of a lease or tenancy. The process is thus:—The two surveyors *first* nominate their umpire, which should, remember, be done in writing, so that no question can arise on this point afterwards; and also the gentleman selected should be written to, for the purpose of obtaining his consent to act. Where time is important, as where it is desired at once to proceed with the matter, it is a very good plan to nominate a second umpire, embodying his name in the written appointment thus:—That if A B should not consent to act, or become incapable, then C D be the umpire. The two surveyors meet and go over the premises, taking the items *seriatim*. It is not always done, and cannot be required, but it will save both surveyors much time if one makes his schedule before the meeting, and at the meeting gives his opponent a copy, as each then can so easily make a note against the objected matters. It will also be the best course for him who is making the claim, as he will be less likely to miss any

dilapidation, which in the heat of discussion or friendly discourse he might do. In usual course the claimant's surveyor prepares such schedule. Where this is not done each surveyor must enter, as he goes through the premises, his own view of the dilapidation, and he should also enter his opponent's assent or dissent therefrom, and the reason (if any), and also all additional claims, or any sets-off he may make. The duty of the surveyor may sometimes be most trying, especially when meeting a brother professional for the first time. Here, then, I would give a little advice. Do not be unyielding because you have made a demand and your opponent (a rather harsh term, perhaps, but still there is little doubt you will often be in friendly, if not less pleasant opposition) has pointed out that the demand is excessive, but give way at once. Every practitioner has his own views; try to meet them, and you will generally find you will receive consideration in return, and thus, while making the meeting more pleasant, best serve your client's interest. Avoid mixing yourself with any quarrel between the clients; you cannot do your duty fairly if you do, and it is not gentlemanly. Your duty is *outside* all questions, save only to determine those which are left to you and your opponent. It only concerns you, then, that he should treat you with courtesy to entitle him to receive from you similar treatment. Do not be afraid to stand by your opinion because your opponent is dictatorial, as "Oh! that's ridiculous; can't be; that's no dilapidation." No doubt you will find some who will feel disgusted with you if their simple *ipse dixit* is not taken as final. Ask such for their authority, and you will generally find, as with most men of that *genus*, they have none, but they reply "*it is so.*" In such cases, I need hardly remind my reader, there is but one way open—namely, refer that item to the umpire. As cases in which one has played a part instruct more perhaps than rules, for the same reason, probably, that lessons from history or biography sink deeper into the memory than those from novels and romances, I will mention one. My opponent, I found, when I handed him a copy of my schedule, in a most uncompromising spirit (parenthetically I may say it was most unpleasant weather, a cold and wet November day), and in the room we commenced with, objected to every item. Well, some were so palpably

right, that I was at a loss to discover the reason or how to proceed. Instead of insisting on the items, I had already tried to make progress by saying, "Well, let us see how many things in this room we can agree to," and it was thus I had obtained an adverse opinion on nearly all. "Well," I said, "it will take us several days to discuss item by item, supposing we put A for those items you agree to and O against those you object to, and meet at either of our offices and discuss them there?" We began, and on the first page there was scarcely anything but the O's, and I saw him begin to waver, being astonished at the appearance of the schedule, and he then said "I am not sure about such and such an item." I said, "Well, let us call that doubtful, and put D against it in our schedules." So on we went with the three letters, the O being almost entirely discarded. In our meeting afterwards we settled the matter most pleasantly, my opponent and I shaking hands. If the umpire is called in be sure when it is your turn to explain why you demand or object to such dilapidations, *be short and to the point*; it is more business-like. I would here observe that when fixtures are left on the premises at expiration of the term, and a new lease granted, in which there is no mention of any reservation to the lessee of such fixtures, they become part of the freehold. Surveyors must be very careful as to this when their clients are about to renew.

UMPIRE.

Remember, if you are acting in this capacity, your duty is to listen to both sides, to be most impartial, and to have no prejudice. You need give no reasons for a decision; in fact, it may be as well to remember what the celebrated Lord Chancellor said, "*Never give a reason for your decision.*"

Make a note of any point or objection you are uncertain about, so that you may consider it afterwards.


Do not talk much, it occupies so much time; the great thing is to listen to both sides. Of course now and then a pointed question may be most wise, or even a suppositious case, so extending a false argument as to reduce it *ad absurdum*. Pithy remarks are most useful in drawing forth short answers, and if the umpire is quick and to the point his very example will almost

necessitate the other surveyors following it. Examine everything minutely yourself that is in dispute, no matter what labour or time it may involve. In no other way can you do your duty.

Try to make both the surveyors see the matter fairly; this may often be done by carefully judging their characters, as very many disputes arise from temper, want of courtesy, and want of judgment; and where the umpire takes trouble to explain and inquire he will sometimes, and indeed most frequently, carry the opinion of both surveyors with him. This is a great triumph if accomplished.


I need scarcely say respect the important position, and require deference shown.

Require almost the same evidence that would be required by the highest legal authorities. It is no doubt true that to judge evidence requires extended reading, knowledge of mankind, and carefully educated powers of analysing and justly weighing facts; but as the acquisition of all such knowledge will conduce to the general ability of the surveyor, and to his attainment of that high position in his profession that all should aspire to, he will see that the knowledge, though here acquired for a limited purpose, must be most advantageous to him.



CHAPTER VIII.

PREPARING FOR ACTIONS—"VIS INERTLE"—ENTER AND TAKE AN ACCOUNT—MAY REFUSE ADMISSION IF NO NOTICE—GIVE NOTICE—BE PUNCTUAL IN ATTENDANCE—MAY SELECT ANY DAY—IF UNDER COVENANT GIVING NOTICE SEE NOTICE IS GIVEN FOR TIME REQUIRED BY DEED—AS TO ENTERING AND PERFORMING REPAIRS—WHERE REFUSAL AFTER NOTICE SERVED—CLIENT MAY LOSE VALUABLE ESTATE—THOUGH CANNOT ENTER TO REPAIR—SHOULD YOU HAVE DONE SO MAY RECOVER AMOUNT OUTLAID—ACTION FOR MONEY VALUE OF DILAPIDATIONS WHERE LEASE STILL EXISTING—DECISION—REPARATION OF FIXTURES—AGE OF PREMISES A GUIDE—GRADY ON THIS POINT WITH CASES THEREON—UNCERTAINTY OF DECISION—CASES CITED—TO WHAT DILAPIDATIONS AND WASTE APPLY.

SSUME that the surveyor is met by simple refusal on the lessee's part to do such repairs as will satisfy the dilapidations, or any repairs at all, or by his *vis inertie* leaves things as they are. Well, what can I do, says the young practitioner? Can I insist on entering and taking any account? Thus much may you do: You can enter and take an account of the wants of dilapidations and waste at any reasonable time, provided, of course, the right is reserved, as it usually is, in the deed. But as the occupant may refuse the surveyor permission to view some portion of the rooms or premises, if he has not previously given notice of his intention, it will be wise to give a written notice of such visit. Mind and be punctual in your view, so that no question can be raised on that score. Where the covenant is to enter so many times a year, to survey, &c., recollect you may select any days in the year you choose without reference to their suitability for doing the repairs (case, *Hill v. Barclay*, 16 Ves., 403). You can then serve the usual three months' notice (seeing that this is the time required by deed, if you intend to act under this covenant), and prepare for action by getting other technical evidence at end of the time if notice not complied with.

Other points I would note, as they are very important. You must not advise your client to enter and do repairs on his sub-lessees' premises, even where they refuse, *after notice*, to do them, unless they will permit it. Your client may thus lose a most valuable estate because his sub-lessees refuse to repair a portion, and though he may be willing to repair such portion at his own expense. Yet such is THE LAW, and further to show how carefully we must all walk when we come within that "charmed spot," should you enter and do the repairs, and so save the estate (which I have done on several occasions by using persuasion, *not force*), you can require, and *law* will enable you to recover the very outlay from the sub-lessee, although, as I have said, you have no right to enter and make such outlay. You must show at the trial, of course, that repairs were absolutely requisite to be done to prevent a forfeiture of the estate, and you can then recover all the money laid out in *necessary* repairs, as damages sustained in consequence of sub-lessee's breach of contract.

It is HELD that where you advise an action not of ejectment for dilapidations, or for waste, but to obtain a sum of money equivalent for the damages existing at the time of action, that you can *obtain* substantial damages (case, *Luxmore v. Robson*, 1 B. and Al., 584). While, however, Woodfall holds this view, strengthened by this case, it appears clear to me the case cited would be overruled now, and that, at most, merely nominal damages would be given. Remember repairing covenants will not extend to fixtures. In making your schedule, recollect you must consider the state and the age of the premises at the granting of the lease, as you will have to defend it on that basis. I cannot do better than quote from Grady *in extenso* on these two points. He says:—

A covenant to repair must be construed with reference to the state of the premises at the time the covenant began to operate; and, therefore, where an under-lease had been made with the same covenants as those in the original lease, allowing an interval between them, it is clear that the covenants would not have the same effect, but would vary substantially in their operation, for the sub-lessee is only bound to put the premises in the same condition as he found them at the time of the lease to him. See per Parke B., in *Walker v. Hatton*, 10 M. and W., 257, 258. *a*

a Colley v. Streeton, 2 B. and C., 273; Gib. on Dilap., 87.

Age of Premises.—In construing a covenant to repair, the nature and condition of the premises as to age, &c., ought to form a subject of consideration. *Tindal, C. J.*, told the jury that the defendant was only bound to keep up the house as an old house, and not to give the tenant the benefit of new work. *a*

To show that great difficulty may beset the surveyor in advising his client, I am tempted to mention a case. The lessee covenanted within two years from the date of the lease to put four messuages in good repair, and keep them in repair during the term, and beyond such covenant that he would within the first fifty years of the term take down the messuages, as occasion may require, and in the place thereof erect four new messuages. The Court of Common Pleas intimated that if, within the fifty years, the houses should be so repaired as to make them completely and substantially as good as new houses, the "occasion" on which the new houses were to be built did not arise (case, *Evelyn v. Raddish*). Yet I venture to affirm that scarcely any one could have anticipated such an *intimation*. Far more likely would it have appeared that the lessor would be entitled to new bricks, new timber, and altogether new houses; therefore clearly he must have them at the end of fifty years, and the words "as occasion may require" only mean that they are to be built earlier than that period if necessary. This would have been a decision more in accordance with the original intention of lessor and lessee. If a lessee have an action brought against him because the sub-lessee has failed to keep in repair, the lessee has a right of action against him for the amount of such damages; but the latest case does not entitle him to recover the costs, because he should not have defended the action, where there was no real defence (cases, *Penley v. Watts*, and *Walker v. Hatton*).

Remember dilapidations and waste must *exist* at the time of action. Be sure you do not claim for fence walls that do not appertain to the property. *b*

Where lease expired and premises left dilapidated, you, if acting for lessor, may claim money for the loss of use of the premises while they are being reinstated.

a *Harris v. Jones*, 1 M. and R., 173; *Gutheridge v. Munyard*, Id. 334; see *Stanley v. Towgood*, 3 Bing., N. C., 4.

b *Woods v. Pope*, 6 Car. and P., 782, *Gaselee*.

Lastly, surveyors must bear in mind that dilapidations and waste may occur not only in lands and houses, but in gardens and orchards, timber trees, dove-houses, warrens, parks, fish-ponds, and other subjects of property, and he must therefore be careful to note them all.



CHAPTER IX.

ACTIONS — DECLARATION — SEPARATE AND DISTINCT COVENANTS — BREACHES — DEMURRER — PLEADS — EVIDENCE WHAT MUST BE SHOWN — WHAT AMOUNTS TO A BREACH OF COVENANT — WHAT GUIDES DECISION OF JURY OR REFEREE — VALUE SHOWN OF ADVICE GIVEN IN CHAPTER V. — HONESTY OF INTENTION NOT SUFFICIENT — CAN SURVEYORS UNCONSCIOUSLY BE INFLUENCED IN THEIR JUDGMENT — WHERE THE TERM OF LEASE EXPIRED HOW TO CLAIM FOR LOSS OF RENT — BASIS FOR ESTIMATING MONEY VALUE OF DILAPIDATIONS — BUILDERS TO CONFIRM — THE “TEAM” — OBTAINING TIME WHEN ACTING FOR DEFENDANT AND COVENANT BROKEN — AGREEING UPON A SPECIFICATION — WHO CAN MAINTAIN ACTIONS — THE HEIR — THE LESSOR — ASSIGNEE — EXECUTORS AND ADMINISTRATORS — AGAINST WHOM THEY MAY BE BROUGHT — AN HEIR — ASSIGNEE — LESSEE — EXECUTORS — ADMINISTRATORS — UNDER-LESSEE’S LIABILITY EXPLAINED.

HAVING in preceding chapters explained how the surveyor prepares to enforce his client’s rights, I now come to the next stage. The solicitor prepares his declaration, and with that the surveyor has little to do. To show how carefully it must be drawn, I would mention that where the covenant was to repair, casualties by fire excepted, and the declaration set it out as a general covenant to repair, *omitting* the exception, the omission was holden fatal upon *non est factum*, although no casualty by fire had in fact happened (cases : *Brown v. Knill*, *Tempany v. Burnand*) ; and, again, where there are the two covenants to repair (these I have explained in “Covenants,” number 19), one being to repair generally and the other within a certain time after notice, they must not be mixed up in the same breach, but must have assigned two separate and distinct breaches, one to each, or the declaration will be bad on *demurrer*. Having regard to all these legal difficulties, I strongly recommend you to try all in your power to induce the person liable to comply with the covenants ; still, no doubt, cases will arise when

only the strong arm of the law will have any effect. The defendant after declaration, does, what is called, pleads; his plea usually taking something of this form, that the house or premises was not out of good and substantial repair. Then comes the question of evidence; and you will have, if engaged on behalf of the plaintiff, to prove the state of the premises, so as to show that they were out of repair at the *date* of writ, and that the covenant to repair in the lease (and which is recited in the declaration) was broken. *a*

To explain what amounts to a breach of covenant, I quote the following from the legal writers, who state:—"What defects in the state of repair of the premises amount to a breach of the covenant must in all cases depend upon the manner in which the covenant is worded, considered also with reference to the nature of the premises. It is not sufficient that the tenant keep the premises in as good a state as they were in when they were let to him; but if his agreement be to keep them in good repair he must do so with reference to the class to which the premises belong." Reader, remember this, as it is the basis of all actions, and guides the decision of the jury or referee. Well, the day of trial comes, and you will now realise the value of my advice given in Chapter V., for no easy task may await you, and it will be some assistance to be able to turn to any item at once, when counsel asks you, instead of fumbling page after page unsuccessfully, and so getting hot and fidgetty yourself, and annoying counsel, judge, and jury. The latter will think you are not to be trusted, if you cannot answer at once. Your conduct in that all-trying position, the witness-box, must much depend on temperament, experience, and confidence in the knowledge of your subject. That honesty of intention alone will not avail you, I might recall to your memory that almost incomparable scene in court in "*Pickwick*," where the great Charles Dickens shows in the character of Mr. Winkle the absolute failure of good intentions. One hint only can be given to assist. Take most carefully your dilapidations, write them plainly, so that you can easily read them, and study your case laboriously, so that you become

a Whelpdale's case, 5 Rep., 119 b.; see *Walton v. Waterhouse*, 2 Saund., 420.

its master, and then, and then only, you may hold your own against the most severe cross-examiner of the "wig and gown."

Bearing on this point the *Saturday Review* in a clever article in a recent issue, headed "Historic Doubts," says :—"It is always so easy to believe what one has an interest in believing, or is desirous from any other motive to believe, that it is seldom the temptation is thoroughly resisted, though the yielding to it may be quite innocent and unconscious. In nine cases out of ten the lawyer is convinced of the justice of his brief, and the expert has a clear conscience in giving his evidence for the side which retains his services." I do not think the writer has sufficiently considered that surveyors and other technical witnesses are so frequently engaged on one side and the other of the question : that his remarks will scarcely apply. I do not think we can *unconsciously* deceive ourselves.

If you have a case where the term has expired, and you are claiming for the loss of the use of premises, while the dilapidations are being made good, estimate the loss of the premises by the rental similar premises in the same locality are obtaining. In arriving at the money value of dilapidations, you base your estimate on the sum it would take to put the premises into that state of repair in which they should have been left to fulfil the covenants. It is often the case to call in builders to confirm, their evidence being that they would do the works you specify as necessary for a certain sum. Your evidence should be supported by three or four surveyors, who are often called a *team* ; the importance and difficulty of the case much, however, guiding the number. Next we have to assume you are acting for the defendant (lessee or other person liable), then your duty will be, if you find there is no defence, to advise your client to ask for time, in which event you will generally find that on payment of costs incurred through the default of your clients, an extension of the time will be given. It will be as well, if you can, to agree upon a specification of works to be done, as this will save any dispute as to the *quantity* of works which should have been done, when the next visit of lessor's surveyor takes place.

It is so important to remember who can bring, or rather who can maintain actions for dilapidations (because any one can bring an action) that I would again use the tabulated form.

TABLE XXV.

1. The heir may, although the lessee have only covenanted with the lessor, his executors, and administrators.

2. The lessor and his assignee.

The reason of this is that the covenants to repair run with the land, and are binding as well on the parties covenanting as on the assignee of his interest, and may be taken advantage of by the assignee of the reversion as well as by the lessor himself. There are eight cases in support of this mentioned by *Grady*.

3. The assignee of the reversion ; but he is limited to such breaches as have occurred *after* he has purchased.

4. The assignee of part of the reversion.

5. The executors and administrators of the party originally having a right to sue.

The executor is not limited, but may sue for a covenant broken in the lifetime of the testator, although the covenant runs with the land. The executor of tenant for life also may sue for breach of covenant committed in lifetime of the testator. Executors or administrators of any person deceased may maintain actions of trespass or case for any injury to the real estate of such person committed in his lifetime, for which an action might have been maintained by such person, provided such injury shall have been committed within six calendar months before the death, and that such action shall be brought within one year after the death.

6. The lessor may, where the demise is not under seal, and where, consequently, the right to sue on an agreement to repair does not pass to the assignee of the lessor, then notwithstanding the assignment the lessor may.

Those against whom actions may be maintained are

TABLE XXVI.

1. An heir.

2. The assignee of the lessee.

And also his executor or administrator, even although the assignee be not mentioned in the deed.

The assignee of a lease is liable for breach of covenant to repair committed during his own possession, though he may have assigned the premises before the action was brought. He is *not* liable directly to the lessor except for such dilapidations as occur from the period the premises were assigned to him, until the period he again, with *bona fides*, assigns them to some one else. He is not liable on a covenant by the lessee to do a specific thing within a given time, if the covenant is broken before the assignment. It is well, however, to remark that the covenant cannot so easily be got rid of, because in nearly all assignments there is the covenant to hold harmless from all the covenants the lessee or assignor. It therefore follows that though the assignee may not be directly liable to the lessor, he is usually liable to an action by the lessee, or the assignor to him.

3. The lessee, who is always directly liable to lessor, and does not and cannot get rid of such liability by assignment, as the assignee may, which we have just explained.

4. The executor, but his liability commences only from the time he becomes interested.


5. Executors or administrators, actions of trespass, or case, for any wrong committed by the deceased in his lifetime, the time, however, being limited.

NOTE.—An underlessee *cannot* be sued in covenant or debt on the *original* lease; the reason being that there is no privity of estate between him and the grantor.



CHAPTER X.

WAIVER—RECEIVERS OF ESTATES—WHO USUALLY APPOINTED BY THE COURT OF CHANCERY—GREAT CARE NECESSARY AS RECEIVER—RECEIPT OF RENT—AS TO GIVING EXTENSION OF TIME—HOW WAIVER OF FORFEITURE CAN BE OBTAINED—AFTER ACTION BROUGHT—NO RELIEF FROM EQUITY—AS TO COMMENCING ACTION BEFORE EXPIRY OF THE TIME GIVEN UNDER NOTICE TO REPAIR COVENANT—WHAT AMOUNTS TO A WAIVER—ENTERING AND DOING REPAIRS—INDUCING AN IMPRESSION OF BEING SATISFIED—WHAT MAY AMOUNT TO A WAIVER EVEN WHERE LESSOR NO PARTY THERETO—INJUNCTIONS—WHERE INTENTION TO DO INJURY—ALTERATIONS—IF IMPROVEMENTS—PULLING DOWN HOUSES—BUILDING—AN ACT CONTRARY TO COVENANT—WHERE IT IS BEING CONTESTED WHETHER THERE IS A RIGHT TO DO CERTAIN ACTS—MERE THREAT—TO WHOM GRANTED—CONCLUSION.

 S surveyors are nearly always appointed receivers of estates by the Court of Chancery, and by those who have large properties and wish them well managed, it behoves our profession to take great care that in the ordinary course of taking the rents they do not stultify any proceedings the solicitors may have taken.

The receipt of rent, for instance, while an action for ejectment is pending, will much complicate the case and add to the difficulty of obtaining a successful verdict; although it would appear it will not amount to a waiver: unless it can be shown it was so intended.

An example I may quote of a son who collected rents for his father, who was too ill to attend to business, it not appearing that the son knew of the forfeiture, has *no* authority to waive it.

Giving more time than the usual three months' notice is not a waiver.

Waiver of Forfeiture.—Can of course be arrived at by putting the premises in repair in accordance with the covenants.

But if action brought, putting the premises afterwards into the most thorough repair required by the covenants will be no answer to the action. Nor will the Court of Equity afford any relief.

Where the two covenants to repair occur and notice is given under one, it is no waiver of the other (the general) covenant, and an action may be brought while the notice is running.

It is a waiver where the landlord, under a special covenant, gave notice that he should enter and do the repairs, and distrain for the expenses.

Where the lessor acted so as to induce the assignee of the tenant, against whom the action was brought, to believe that he was doing all that he ought, it acted as a waiver, and the lessor did not recover although the covenants were actually broken.

The following may well be cited as showing a curious decision where a waiver really was given without the landlord's consent, or knowledge. There was a treaty for the sale of the premises, and the proposed purchasers absolved the tenant from repairing, and the Court thought that, although there was no waiver by the landlord, yet that the neglect of the tenant was, under the circumstances, so excusable, that he was entitled to relief. It was, no doubt, one of those "hard cases" which, to use the well-known expression, "make bad law."

Injunctions can only be obtained where there is an apparent intention on the part of the tenant to do some irreparable injury to the premises; for example, it will restrain tenant from altering the premises, if such alterations be disagreeable to those who have a permanent interest in them, although the alterations may improve and beautify the property. Again, the Court will restrain a tenant from pulling down a house and building another, should it be objected to, by the landlord. Again,

injunction can be obtained to restrain a tenant from committing an act contrary to his own covenant, even though it be not waste. Injunctions will also be granted to restrain the doing of certain acts, which the tenant claims a right to do, until by an action at law such right has been tried.

It should be borne in mind it is not necessary that the action should be commenced before the application is made to the Court, a mere threat will sometimes be quite sufficient. In one case the sending a sawyer to mark trees was held sufficient. *Injunctions will be granted* to all persons whose interest would be prejudiced by the commission of the acts, provided of course they can show serious injury. It is not necessary, therefore, to show *privity of estate*.

I have carefully considered every part of the subject, and shown that DILAPIDATIONS are voluntary, or permissive, and that in legal consideration (as Mr. Grady expresses it) they are either a wrongful act or misfeasance, and an injury to the reversionary estate, or merely a breach of contract; and that in the former case, the remedy would be by an action on the case in the nature of waste for the injury done to the reversion; and in the latter case the remedies are various, according to the nature of the contract between the parties. The forms of action comprise assumpsit, covenant, contract, debt (where covenant secured by a bond), ejectment, and injunction.

That these varied forms of action give the injured person plenty of opportunities for obtaining redress no one will doubt; but still, where those liable can be induced to meet their liability fairly, my advice is, avoid law.

A few words in conclusion. It is astonishing how soon one's pursuits cling to one. I recollect, some years since, making a walking tour, knapsack on shoulder, thick stick in hand, with a friend, and having walked a long distance we came upon one of those lovely bits of scenery which are so glorious and enthralling, probably because they are so suddenly met with. We stood enraptured—the grand bay; the sloping cliff, with the pretty cottages nestling amongst the trees; beyond, the blue

sea with the white sails of the ships. How the charm was broken by my waggish friend, saying: "Replace defective chimney-pots; point open joints of chimney shafts!" That the pursuit of this dry subject is opposed to picturesqueness is clear: it is the very antithesis. Imagine a surveyor taking dilapidations in such a scene as the following, which I extract from that well-known book, "Dr. Syntax's Tour in Search of the Picturesque:"—

"Beneath that archway once a gate,
With helmet crest in warlike state,
The bands marched forth, nor feared the toil
Of bloody war that gave the spoil.

* * * * *

But now, alas, no more remains
Than will reward the painter's pains:
The palace of the feudal victor
Now serves for naught but for a picture."

No. The surveyor must cast aside the love of the picturesque lichen, crumbling walls, dilapidated thatch, overhanging chimneys, broken gates, untrimmed roofs, and so forth, when in pursuit of his duty, and he will find these pages a very useful reference.

That such reference to some standard is thought necessary, even in the fashionable world, I would quote an amusing passage from Mrs. Edwards's latest work:—"Alfred Hervey," observes Mrs. Crosbie suavely, "is a man of the world, my dear Emma. Alfred knows the value of etiquette, as Rawdon will have to learn it in time. My dear, dear old uncle, your godpapa, sir, Canon Hervey, used to say that good manners are the small change of good morals. 'In our transitory state we have not time, we have not wisdom,' the venerable man used to say, 'to decide, on the spur of the moment, whether any intended action be intrinsically *right*. We can always say to ourselves, is it usual for persons moving in a certain refined sphere of life to do so-and-so? And we shall rarely, if ever, find ourselves misled in the result.'"

Surely, if time is so limited that *authority* is wanted to guide the fashionable world, how much more must it be required for those pursuing our arduous profession?

Such an AUTHORITY I have endeavoured to make the foregoing pages on this important subject.



APPENDIX.

A P P E N D I X.



ANSWERS TO QUESTIONS.

Q.—Is it a dilapidation if the paving stones of an area are in several places broken in smaller pieces, or cracked across, but still all in place, and bonded with mortar or cement?

A.—It is a dilapidation, and my correspondent will find the reasons fully given on page 36.

Q.—Under a yearly tenancy, after a tenant has been in a house several years, is he liable for papering of a room being slightly torn, or would that come under wear and tear? If not, what does tear mean? If liable, must he paper all the room or patch the injured part?

A.—As to the first part of the question, he is clearly liable for the torn paper, as it would not be “wear and tear”—“wear and tear” being usage, and not damage; perhaps I cannot better explain this to my correspondent than by mentioning as an illustration the case of machinery, where “wear and tear” would palpably be the natural wear for its use in motion; breakages and other injuries would be dilapidations. As to the second part of the question, undoubtedly he must paper the entire room if he cannot match the pattern of the paper with which the room is papered.

Q.—If he (lessee) makes a long splinter on a grained skirting, may he mend and touch up, or must he paint and grain skirting all round the room?

A.—Only mend and touch up, but it must be done efficiently.

Q.—Is lessee liable to reinstate, if bad settlement of house (owing to insecure foundation) has caused a fracture of the walls?

A.—Yes.

Q.—If partitions and floors are sunken?

A.—Must be reinstated if caused by neglect of the lessee.

Q.—If party wall bulged or otherwise dilapidated, is lessee liable to reinstate? If so, can he compel adjoining owner to contribute his share of expense towards so doing?

A.—The fact of its being a party wall makes no difference; the same liability attaches as would to an external, or any wall. As to the second part of the question, adjoining owner is liable to contribute.

Q.—Am I correct in believing that additions to tenements, which may be made by lessee during his holding, are brought within repairing clauses of lease or agreement, if no other stipulation thereon respecting such erection or addition?

A.—Certainly you are correct. The covenants would apply unless the additions were so erected as not to become part of the freehold. In this latter case they would be lessee's fixtures; and he could remove them before expiry of lease.

Q.—Where a tenant is bound by agreement to leave house in "tenantable repair," what does that imply? Does it mean *fresh* paper, ceilings to be whitewashed *anew*, &c., and does it infer any substantial repairs?

A.—The writer of this question will do well to read "Covenants, their construction and accepted meaning," Chapters 3, 5, 9. He will there see that the covenant must be read having regard to the original state of the house, and it may be taken that the house should be left in fair order, but not, certainly, that at the end of the tenancy the house shall be fresh papered, and ceilings fresh whitened. It does require such substantial repairs as are necessary to keep the house wind and water-tight, so that the premises may be kept in fair condition.

Q.—If a yearly tenant complains to landlord of want of repairs, landlord neglects, and damages ensues, which party is liable for the damage?

A.—If no written agreement whereby landlord is bound to repair, then tenant must put up with the loss. My correspondent will see in Table I., Chapter 2, that there is no liability on the part of landlord to repair; so that it necessarily would follow that he cannot be liable for any injury arising from his omission to do that which he need not do. He is not legally liable at all.

Q.—Under a yearly tenancy if external rain water-pipe from roof gets choked or corroded, and the water leaks through wall, damaging the internal plastering, who is liable?

A.—The tenant would be liable in strict law, but I do not believe it could be enforced. If the injury were sustained in London, the *custom*, I think, might be pleaded, which is against requiring yearly tenants to repair roofs.

Q.—Am I correct in understanding you to mean that when a tenant continues after the expiration of his lease, he does so under all the covenants thereof?

A.—You are nearly correct in so understanding me. The law is most certain on this point; he holds over, liable to all the covenants of his expired lease, which, however, are to be construed more mildly, on account of the absence of certainty in his remaining—see Table II., par. 13, Chapter 2. For example, suppose seven years to have passed by since lease expired; and that if lease existed the whole internal painting would be due, and further, suppose landlord had given notice to determine the tenancy, it would be *hard* on the tenant that he should be turned out, and still be charged with the entire painting of the house, unless in his lease were the covenant (which is somewhat unusual) that the house shall be painted inside in the *last* year of the term. In this latter case, as he would not be damnified in any way, he would be liable for the *whole* of the painting.

Q.—If carving in stone or wood be decayed, is lessee bound to cut out block and make good as before?

A.—Yes, see Table XVIII., Chapter 6; the last paragraph shows the cheapest way of doing this that is permitted.

Q.—If paving in yard put down by lessee during holding

(where none before), and same be broken or otherwise defective, is he bound to reinstate?

A.—Certainly he is.

Q.—If tenant served with usual notice to repair within three months, and he agrees to do all repairs, &c., to satisfaction of landlord's surveyor, is said landlord compelled by law to supply tenant with schedule of dilapidations?

A.—No; and the reason is obvious. The lessee or person liable to repair is supposed to understand the liability he has assumed, just as every Englishman is presumed to know the laws under which he lives, and no doubt the one case is as much a *fiction* as the other. Therefore, the wise man, on receiving the notice, would at once consult his own surveyor, and so in the end save money and trouble.

Q.—If basement flooring and joists rotted, through damp arising from nature of soil, is lessee liable?

A.—Yes.

Q.—Presuming lessee has signed agreement for lease with usual repairing covenants, and two days after taking possession the roof falls in owing to defective state of timbers, is lessee bound to reinstate, when it can be clearly shown that such dilapidation existed previous to his signing agreement?

A.—Yes. The liability accrues from the execution of the instrument. This is the reason why it is so necessary, when about taking the house on lease, to have a surveyor to inspect the state of premises.

Q.—Under a covenant to well and tenantably repair, without any express obligation to paint, is a lessee bound to paint?

A.—Yes; see Table XXI., Chapter 6, where liability is fully explained.

Q.—I should be glad if the writer of the articles on this subject would, by way of practical illustration, answer the following queries:—(1.) If, at the end of a lease where tenant covenants to repair a boarded floor is to all appearance sound and in a

tenantable state of repair, but when taking up a board the under-side of the boards and joists are found to be rotten, must the lessee replace, although possibly, if undisturbed, the floor might last a few years, and without taking up a board the real state of the floor would not be known? (2.) Suppose a roof to be framed of English timber, say fir, put on during the term of a lease by the tenant, the tile or slate-covering perfectly sound, but the timber thoroughly worm-eaten, although not at the time giving way, is the lessee bound to replace the timber?

A.—The answer to both questions is "Yea." But, as the simple answer will not be satisfactory to many of my readers unless the reason is given, I give the latter. Legally, it is not of the slightest consequence whether a dilapidation can be seen or not. Therefore, if the floor-joists are rotten, they must be renewed. Again, as to the roof, if the timbers are, as proposed in his question, thoroughly worm-eaten, they must be reinstated. Let me illustrate this from one case in my own practice. A large crack in a staircase wall, I found, had been papered over. Now, to all appearances, the wall was all right, and might probably not have been noticed; but, by putting my hand against the wall, of course it was found out. Well, I required the removal of the paper, the making good of the wall in a proper manner, and the repapering with paper of the same pattern. Can I bring a better case to illustrate that, in law, no cognisance is taken whether a dilapidation is hidden or not? To make the answer full, I would mention the usual practice. This is to walk over a floor, and if it appears sound to pass it, and not to take up aboard, and this generally is quite a sufficient test. The same with a roof; if no indication of decay can be seen, it is usual and proper to conclude the timbers are sound, as they perform their duty.

Q.—Where a lessee has taken out the chimney-pieces originally in the house, and put in the best rooms very expensive ones, is he bound to leave the more costly? or can he by reinstating the original ones be enabled to remove the others? The same question applies also to stoves and expensive kitcheners.

A.—He may reinstate the original, but he must make good all disturbed works.

Q.—Is external pointing to front wall and all sides a dilapidation when it has not been pointed since the building of the house, some seventy years ago?

A.—It forms no part of deciding the question of dilapidations. It is immaterial whether the house walls are 70 or 200 years old, or whether they have been pointed or not. The question the surveyor has to determine is—are the walls suffering, and being injured for the want of *pointing*? If so, he then claims pointing. The kind of pointing he is to require, where a house has been pointed, is that of the same sort. Where it has never been pointed then the cheapest kind consistent with good sound work.

Q.—Where walls have sunk through drainage being effected in main sewer, must lessee reinstate and make good?

A.—Yes.

Q.—Would you kindly explain meaning of Table II., No. 21, Chapter 2: "Odd as it may appear, it is yet correct that the covenant to paint at end of five years is not a continuing one." Does this imply that you cannot compel the lessee to paint every five years if he left the premises after ten years, having only painted once? Could you come upon him for dilapidation or damage for not having painted?

A.—No, not under this covenant, because it is fulfilled by the painting at the fixed date. You could, I may mention, under the general repairing clauses, take up the question of the state of the paint.



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MODEL HOUSES

FOR THE

INDUSTRIAL CLASSES.

BEING

A REVIEW OF THE DEFECTS OF EXISTING MODEL LODGING-HOUSES, AND CONTAINING REGISTERED DESIGNS FOR MODEL HOUSES, FROM WHICH BUILDINGS HAVE BEEN ERECTED BY THE AUTHOR.

TOGETHER WITH

REGISTERED PLANS FOR THE ADAPTATION OF EXISTING DWELLING-HOUSES FOR LETTING IN FLATS.

TO WHICH ARE ADDED

MANY USEFUL HINTS TO INVESTORS IN SMALL HOUSE PROPERTY ON PURCHASING AND MANAGEMENT,

AND

A GENERAL VIEW OF THE NECESSARY CLAUSES WHICH SHOULD BE CONTAINED IN A NEW ACT OF PARLIAMENT.

By

BANISTER FLETCHER,

Associate of the Royal Institute of British Architects.

LONDON: LONGMANS, GREEN & Co.

1871.]

[Price 16s. 6d.]

Opinions of the Press.

We must compliment Mr. Fletcher upon progress in the right direction.—
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. But much remains to be done, and we therefore gladly welcome Mr. Fletcher's concise and thoroughly practical handbook on the subject. We cannot close the book without being struck with the beauty of the houses designed by Mr. Fletcher for working men's residences, so unlike the barrack or barn-like structures misnamed model lodging-houses. The illustrations are beautifully lithographed.—PUBLIC OPINION Oct. 28, 1871.

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The poorest Englishman loves his *chez soi*, and unless the model lodging-house can in some measure provide him with this, he looks upon it with prejudice and disfavour. Mr. Fletcher has clearly appreciated this insular feeling. . . . We need not enter into detail about the author's scheme, which, though new, is extremely simple, and ought long ago to have commended itself to the architects employed in the erection of homes for the industrial classes.—THE GLOUCESTER NEWS, Oct. 14, 1871.

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The great interest manifested in late years with regard to the houses inhabited by the working classes, has led to the production of this volume which is worthy of perusal. Some well-executed drawings add much to the value of the work.—THE CITY PRESS, Oct. 7, 1871.

We have not hesitated to print the whole of this extended title-page, in order that our readers might see at a glance the thorough-going and practical character of the book; and we were the more disposed to do this because, after a careful perusal, we found that the author had kept the word of promise to the letter. . . . We trust that his book will be universally read, and that the diffusion of his ideas and plans will "convert the wretched homes of the working people of London and our large towns into really healthy dwellings."—THE MANCHESTER EXAMINER AND TIMES, Nov. 1, 1871.

The thirteen plates form, indeed, the great feature of the book, and, aided by Mr. Fletcher's commentary, carry conviction to the mind of the reader. . . . We close Mr. Fletcher's book with the conviction that it deserves a wide circulation, and is calculated to effect much good. The philanthropist will peruse it reflectively, and the capitalist is not likely to overlook or undervalue some apparently well-grounded intimation of some large and assured percentages.—THE BRISTOL MERCURY, Nov. 4, 1871.

Mr. Fletcher has done something more than the hackneyed "good service" to his poorer brethren by the publication of this book. . . . There are some excellent plans of suitable houses, well built, and not beyond the means of the London artisan. . . . We recommend this book to building speculators.—ENGLISH MECHANIC, Oct. 13, 1871.

The author of this little volume has treated a very important question in a thoroughly practical manner. He demonstrates satisfactorily that there is not the slightest reason why model dwellings for the working classes should be uniformly ugly; and that the difficulty of providing a sufficient number of them does not depend for its solution on the construction of the multiplicity of barrack-like buildings, inasmuch as existing houses may be readily and cheaply adapted to the required purpose (as recommended by Lord Shaftesbury), on a simple and perfectly effectual plan devised by the author. This useful book should be carefully studied by all who are interested in the provision of healthy, comfortable, and convenient dwellings for the industrial classes—one of the most important social problems of the day.—ART, Nov., 1871.

On this topic a very admirable volume has just been written by Mr. Banister Fletcher, and published by Longmans. He, in "Model Houses for the Industrial Classes," shows, with the aid of elevations, plans, specifications, and estimates, how 7½ per cent can be easily obtained.—THE WESTERN MORNING NEWS, Nov. 6, 1871.

We commend this treatise to the notice of the noble and right honourable statesmen, and to the representatives of the working classes, who are the high contracting parties in the new social movement. . . . In our opinion he has fairly grappled with, and successfully mastered, one of the most important social problems of the day. . . . No greater service can be rendered to the country by statesman or citizen. . . . And we can congratulate the author on not only having given us the valuable fruits of his own professional experience by plans, elevations, and specifications of model houses, but in having as an author produced a model work, conveying the results of his experience in a clear and lucid style, so that he who runs may read, and become almost as great an adept as himself. In an age in which what little ideas we have are smothered in oceans of words, it is a comfort to find good matter in small compass.—INVESTORS' GUARDIAN, Oct. 28, 1871.

He has evidently taken up the subject of improved dwellings for the working classes with determination. Mr. Fletcher protests, and as we think, wisely, against rendering such buildings conspicuous in any way. But the principal, or one of the principal points, upon which Mr. Fletcher insists is, that much greater progress may be made, and far more satisfaction given to the working classes, by the transformation of existing than the construction of new habitations for their use; and this point is illustrated by a number of practical plans, which deserve attention.—JOURNAL OF THE SOCIETY OF ARTS, Oct. 27, 1871.

Mr. Fletcher treats the subject in a very business-like way indeed. . . . Mr. Fletcher gives us a very great variety of suggestions for alterations of existing buildings, all apparently very practicable, but for which we must refer the reader to his book. These extracts must suffice for the present to show the very practical and common-sense nature of Mr. Fletcher's work, which we cordially recommend to the attentive study of our readers.—THE BUILDING NEWS, Nov. 3, 1871.

Mr. Banister Fletcher, in his "Model Houses for the Industrial Classes," shows, with the aid of elevations, plans, specifications, and estimates, how 7½ per cent can be easily obtained. Mr. Fletcher, disapproving of the large blocks, whose barrack-like appearance too often renders our model lodging-houses unpopular with working men, built a block of cottages at Pentonville for £1,118, the interest of which at 5 per cent. would be £55 18s. Add to this the ground rent, taxes, repairs, &c., together £67 13s., and it will be seen that a rental of £123 11s. would be required. But the present rental is £166 8s. So that the actual return is more than 8½ per cent., and there is no doubt that if the rents were raised the houses would be fully occupied. According to these figures there is no need to look upon house-building as a philanthropic, as distinct from, or opposed to, a commercially remunerative undertaking.—JOHN BULL, Nov. 25th, 1871.

We heartily welcome a book which shows how such abodes may be improved, and the capital employed be made to pay fair interest. . . . He upsets all our prevailing ideas of "Model Houses" which, being gathered from existing examples, we considered must consist of huge, ungainly structures, with external staircases, while Mr. Fletcher gives us a view of those he has built at Pentonville. Certainly no one would imagine from this perspective sketch that the premises were occupied by more than one family, and the appearance is generally that of good houses having rooms on each side of the entrances. . . . We confess there is much that calls for serious investigation and reflection, and we cordially recommend this book to the notice of our readers as an able and most careful work, well illustrated, and one which will well repay a careful perusal.—THE SCIENTIFIC REVIEW, Dec. 1, 1871.

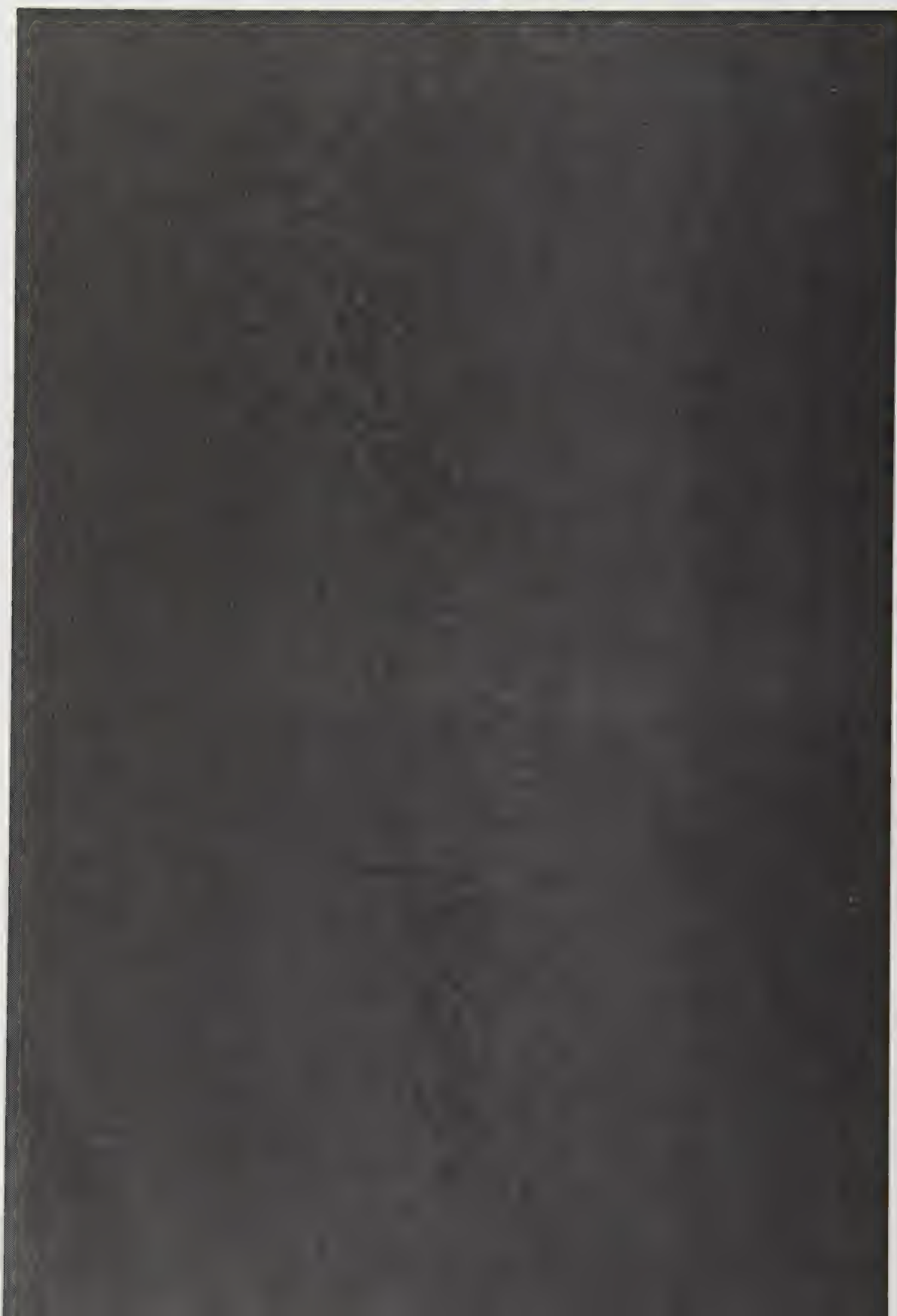
With the view, then, of creating an active interest in the question as to the best means of providing "Model Houses for the Industrial Classes," we desire to call attention to Mr. Banister Fletcher's volume, which may be accepted as a trustworthy guide, and with its complete directions, estimates, and plans, is a perfect storehouse of information. Not only does he show us how to erect a block of buildings to the best possible advantage, as far as the utilisation of space and the provision of the utmost accommodation are concerned, but he also adds the very satisfactory information that houses erected on his model are already paying a dividend of four per cent., besides leaving a considerable margin for profit.—CHURCHMAN'S SHILLING MAGAZINE, Nov., 1871.

The writer is evidently experienced in some of the practical problems to be solved in the erection of working-people's houses, and his book will be of use to reformers and building societies.—*THE MECHANICS' MAGAZINE*, Dec. 30, 1871.

Mr. Fletcher's work will be found of real service to all who have at heart the social improvement of the working classes. . . . The simplicity and clearness of Mr. Fletcher's style, and the abundant illustrations of his work, ought to tempt readers to look into his views, and to examine them for themselves. . . . It is by far the most useful work on the subject we have yet seen.—*THE STANDARD*, Dec. 22, 1871.

Mr. Fletcher's "Model Houses for the Industrial Classes," contains numerous plans for building lodging-houses for the poor, and what, perhaps, is more important, for adapting the houses already built to the requirements of health and decency. His plans certainly seem feasible, though we are unable to criticise his specification, or to say whether his promises are well grounded. The subject is one, however, of extreme importance, and this profusely-illustrated volume ought to be of some use in considering it.—*EXAMINER*, Sept. 30, 1871.

Appealing, as it does, to so varied a public, Mr. Fletcher's "Model Houses for the Industrial Classes" ought to find abundance of readers. He sets out clearly and briefly the defects of the houses in which working-men usually live, and the reasons why the attempts which have been made to improve them have not met with the success they merit. . . . An interesting and most important chapter of Mr. Fletcher's book deals with the question of cost. . . . We have paused over much in Mr. Fletcher's little book that deserves notice, but all who are interested in the subject will do well to get it for themselves. It is the most practical contribution we have seen to the solution of the great difficulty how to provide the poor with houses which shall not be a direct incentive to disease, pauperism, and vice.—*THE SATURDAY REVIEW*, Nov. 25, 1871.











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